

NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special Meeting of the **Tracy City Council** is hereby called for:

Date/Time: **Tuesday, July 12, 2022, 6:00 p.m.**
(or as soon thereafter as possible)

Location: **Tracy City Hall**
333 Civic Center Plaza, Tracy, CA.

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Tracy City Council on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

This meeting will be open to the public for in-person and remote participation pursuant to Government Code Section 54953(e)

The City of Tracy remains under a local emergency for COVID-19 and is now conducting teleconference meetings pursuant to State Law. Teleconferenced locations may include various locations including Tracy City Hall. In accordance with the California Department of Public Health Guidelines, universal masking is recommended for all persons regardless of vaccination status and social distancing protocols will be in place for Tracy City Hall.

Members of the public may participate remotely in the meeting via the following method.

For Remote Public Comment:

During the Items from the Audience, public comment will be accepted via the options listed below. If you would like to comment remotely, please follow the protocols below:

- *Comments via:*
 - **Online by visiting** <https://cityoftracyevents.webex.com> and using the following **Event Number: 2558 562 3400** and **Event Password: TracyCC**
 - ***If you would like to participate in the public comment anonymously***, you may submit your comment via phone or in WebEx by typing “Anonymous” when prompted to provide a First and Last Name and inserting Anonymous@example.com when prompted to provide an email address.
 - **Join by phone by dialing +1-408-418-9388**, enter 25585623400#8722922# Press *3 to raise the hand icon to speak on an item

- *Protocols for commenting via WebEx:*
 - *If you wish to comment under “Items from the Audience/Public Comment” portion of the agenda:*
 - *Listen for the Mayor to open “Items from the Audience/Public Comment”, then raise your hand to speak by clicking on the Hand icon on the Participants panel to the right of your screen.*
 - *If you no longer wish to comment, you may lower your hand by clicking on the Hand icon again.*
 - *Comments for the “Items from the Audience/Public Comment” will be accepted until the public comment period is closed.*

- **The total allotted time for public comment under “Items from the Audience/Public Comment” will be 15 minutes.**

1. Call to Order
2. Roll Call
3. Items from the audience - *In accordance with Council Meeting Protocols and Rules of Procedure*, adopted by Resolution 2019-240, a five-minute maximum time limit per speaker will apply to all individuals speaking during "Items from the Audience/Public Comment". For non-agendized items, Council Members may briefly respond to statements made or questions posed by individuals during public comment; ask questions for clarification; direct the individual to the appropriate staff member; or request that the matter be placed on a future agenda or that staff provide additional information to Council.
4. ADOPT A RESOLUTION: 1) ORDERING THE CITY CLERK TO SUBMIT A MEASURE TO THE CITY OF TRACY VOTERS AT THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION, AN ORDINANCE REPEALING AND REPLACING, IN ITS ENTIRETY, CHAPTER 6.04 (BUSINESS TAXES) OF THE TRACY MUNICIPAL CODE, AND, IF APPROVED BY THE CITY COUNCIL, 2) AUTHORIZING THE SUBMISSION OF AN ARGUMENT ON BEHALF OF THE CITY COUNCIL WITH DESIGNATED AUTHOR(S) AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE BUSINESS TAXES MEASURE ON THE NOVEMBER 2022 BALLOT
5. Council Items and Comments
6. Adjournment



Mayor

Posting Date: July 9, 2022

The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled to participate in employment, programs and facilities. Persons requiring assistance or auxiliary aids in order to participate, should contact the City Manager's Office at (209) 831-6000 at least 24 hours prior to the meeting.

AGENDA ITEM 4

REQUEST

1) ORDERING THE CITY CLERK TO SUBMIT TO THE CITY OF TRACY VOTERS AT THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION, A BALLOT MEASURE REPEALING AND REPLACING, IN ITS ENTIRETY, CHAPTER 6.04 (BUSINESS TAXES) OF THE TRACY MUNICIPAL CODE, AND 2) AUTHORIZING THE SUBMISSION OF AN ARGUMENT ON BEHALF OF THE CITY COUNCIL WITH DESIGNATED AUTHOR(S), AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS, OF THE BALLOT MEASURE ON THE NOVEMBER 8, 2022 GENERAL ELECTION BALLOT

EXECUTIVE SUMMARY

At the July 5, 2022 Special Meeting, the City Council considered the action to to the City of Tracy voters at the November 8, 2022 General Municipal election a ballot measure repealing and replacing, in its entirety, Chapter 6.04 (Business Taxes) of the Tracy Municipal Code. The City Council requested an analysis of the base tax gross receipts threshold. This report includes a comparison of establishing a base fee for the first \$200,000, \$350,000, or \$500,000 of gross receipts.

Following the discussion on the proposed tax structure, this item requests Council approval of a resolution authorizing the submission of a ballot measure, including the ballot question and proposed ordinance. The resolution further authorizes the City Clerk to allow for the submission of arguments for and against, as well as rebuttals, regarding the measure; authorizes the submission of an argument for the measure on behalf of the Council, and directs the City Attorney to prepare an impartial analysis of the ballot measure in November 8, 2022 General Election Ballot. This item further requests that Council, by motion, designate an author of the Council's argument for the measure.

DISCUSSION

The City Council held a Special Meeting, on July 5, 2022, to consider the action to submit to the City of Tracy voters at the November 8, 2022 General Municipal election, a ballot measure repealing and replacing, in its entirety, Chapter 6.04 (Business Taxes) of the Tracy Municipal Code. The City Council requested an analysis of the base tax gross receipts threshold. This report includes a comparison of establishing a base fee for the first \$200,000, \$350,000, or \$500,000 of gross receipts.

An alternative to the flat tax that is currently in place for Business Taxes is a progressive gross receipts tax, in which businesses with higher gross receipts pay more than businesses with less gross receipts. In a progressive system, every business pays their fair and proportional share into the City's General Fund. Several other Bay Area cities have implemented various forms of progressive business taxation, most notably San Francisco in 2012, as well as Stockton, Modesto, Walnut Creek, and San Jose. In all these cities, the smallest gross receipts businesses pay a much lower amount than the

larger gross receipts businesses. The City of Oakland is also considering similar changes to its business taxes scheme.

As part of the adopted fiscal sustainability strategies adopted, on March 9, 2021, the City Council directed the Fiscal Sustainability Ad-Hoc Committee to develop a modernized Business Taxes scheme that would also provide some tax relief to small businesses, as defined by total gross receipts. The initial draft of the Business Tax structure proposed a flat rate of \$25 for the first \$50,000 in gross receipts, which reflects most business taxes schemes in place for cities providing using gross receipts. To provide a greater tax relief to businesses, the Ad-Hoc expanded this to a flat rate \$100 for the first \$100,000 in gross receipts. After community input, the Ad-Hoc further expanded the tax relief by proposing a flat rate of \$50 for the first \$200,000 in gross receipts. Using this tax structure, only Tracy and Los Angeles offers a tax break for the gross receipts over \$100,000. The tax is projected to generate approximately \$4.9 million, or a \$4 million increase in Business Taxes, if approved by the voters.

Proposed Business Taxes Rate Structure

Business Rate Categories	Minimum Fee	Proposed Gross Receipts Rate
GENERAL BUSINESS	\$50 Flat Rate Per Business (first \$200,000 of GR)	0.001 X Gross
MANUFACTURING, WAREHOUSING, WHOLESALING		0.0015 X Gross
CONTRACTOR		0.002 X Gross
SERVICE		0.002 X Gross
PROFESSIONALS		0.003 X Gross
RENTAL (COMMERCIAL)		0.003 X Gross
RENTAL (RESIDENTIAL)		0.003 X Gross

Alternative Business Taxes Structures

During the discussion of the proposed Business Taxes ballot measure, the City Council discussed broadening the tax break for businesses. They requested staff return with a revenue calculation based on the flat rate of \$50 for the first \$350,000 or the first \$500,000 in gross receipts. This tax relief is provided to all businesses regardless of business rate categories. Under a higher tax relief structure, business categories that typically have a greater profit margin will receive the largest benefit; in turn, the business categories that typically have a lower profit margin receive the lowest benefit under this tax structure.

Below is the three side by side comparisons of projected revenue by business rate category.

Business Rate Categories	Proposed Rate	Total Businesses	Est. Total GR Tax (\$200k threshold)	Est. Total GR Tax (\$350k threshold)	Est. Total GR Tax (\$500k threshold)
GENERAL BUSINESS	0.001	693	\$ 2,220,579	\$ 2,171,882	\$ 2,126,506
MANUFACTURING, WAREHOUSING, WHOLESALING	0.0015	219	\$ 1,803,999	\$ 1,789,017	\$ 1,774,377
CONTRACTOR/SERVICE	0.002	3,202	\$ 723,878	\$ 493,287	\$ 325,896
PROFESSIONALS/RENTAL	0.003	625	\$ 155,971	\$ 65,420	\$ 44,532
Totals		4,739	\$ 4,904,426	\$ 4,519,606	\$ 4,271,312



Next Steps

Staff has prepared three proposed ballot measures, ballot questions, and related resolutions for the November election for the City Council’s consideration. They each reflect one of the three options the Council requested for the tax structure to reflect a base rate. The City Council should discuss the three tax structures and direct staff as to which ballot measure, if any, they want to go to the voters.

Resolution 1: Business Taxes including a flat rate of \$50 for the first \$200,000

In accordance with State law, the proposed amendment will be presented as a ballot question. Specifically, the proposed approves the following ballot label for the proposed General Tax, to be submitted for a “Yes” or “No” vote:

To ensure large businesses pay a proportionate share and provide funding for City services such as: repairing potholes/streets; keeping public areas healthy/safe/clean; maintaining neighborhood police patrols/9-1-1 emergency response/fire protection; supporting our economy/general government use, shall the ordinance to update the City of Tracy business taxes be adopted with typical rates between 0.1% and 0.3% of gross receipts, as described in the ordinance, providing an additional \$4,000,000 annually, until ended by voters?	YES	
	NO	

Resolution 2: Business Taxes including a flat rate of \$50 for the first \$350,000

In accordance with State law, the proposed amendment will be presented as a ballot question. Specifically, the proposed approves the following ballot label for the proposed General Tax, to be submitted for a “Yes” or “No” vote:

To ensure large businesses pay a proportionate share and provide funding for City services such as: repairing potholes/streets; keeping public areas healthy/safe/clean; maintaining neighborhood police patrols/9-1-1 emergency response/fire protection; supporting our economy/general government use, shall the ordinance to update the City of Tracy business taxes be adopted with typical rates between 0.1% and 0.3% of gross receipts, as described in the ordinance, providing an additional \$3,500,000 annually, until ended by voters?	YES	
	NO	

Resolution 3: Business Taxes including a flat rate of \$50 for the first \$500,000

In accordance with State law, the proposed amendment will be presented as a ballot question. Specifically, the proposed approves the following ballot label for the proposed General Tax, to be submitted for a “Yes” or “No” vote:

To ensure large businesses pay a proportionate share and provide funding for City services such as: repairing potholes/streets; keeping public areas healthy/safe/clean; maintaining neighborhood police patrols/9-1-1 emergency response/fire protection; supporting our economy/general government use, shall the ordinance to update the City of Tracy business taxes be adopted with typical rates between 0.1% and 0.3% of gross receipts, as described in the ordinance, providing an additional \$3,200,000 annually, until ended by voters?	YES	
	NO	

Election Related Actions

Section 9282 of the Elections Code allows “...the legislative body, or a member or members of the legislative body authorized by that body, or an individual voter who is eligible to vote on the measure, or bona fide association of citizens, or a combination of voters and associations...” to file an argument for or against a ballot measure submitted by a legislative body. The statute requires that written arguments not exceed 300 words in length and meet certain formatting requirements. The resolution sets forth the requirements for these arguments and requires their submission by the dates set by the County Registrar of Voters. In addition, the resolution requests that Council authorize the submission of an argument for the measure on behalf of the City Council and designate an author, by motion. Only one argument filed in support of, or against, a measure may be selected to appear with the measure. Section 9287 of the Elections Code provides that if multiple arguments in favor of, or against, the measure are timely filed with the City Clerk’s Office, then the City Clerk must grant preference first to any argument authored by the legislative body, then to an authorized Council member or members, then to a bona fide citizens group, and finally to an individual voter registered

and eligible to vote on the measure.

Section 9280 of the Elections Code provides that once a ballot measure qualifies for the ballot, the governing body may direct the City Clerk to transmit a copy of the measure to the City Attorney to prepare an impartial analysis. The proposed resolution establishes requirements and states that the analysis must be submitted by the deadline established by the County Registrar of Voters.

STRATEGIC PLAN

This agenda item supports Governance Strategic Goal 2: ensure short- and long-term fiscal health.

FISCAL IMPACT

The City currently collects approximately \$900,000 annually in Business Taxes. It is estimated that the proposed revisions to the Business Taxes structure will generate approximately \$5M in annual tax revenue for the City's General Fund. (Assuming Resolution 1)

RECOMMENDATION

Adopt a Resolution, 1) Ordering the City Clerk to submit to the measure to the City of Tracy Voters at the November 8, 2022, General Municipal Election a ballot measure repealing and replacing, in its entirety, Chapter 6.04 (Business Taxes) of the Tracy Municipal Code by selecting one of the following alternatives:

- Resolution 1: Business Taxes including a flat rate of \$50 for the first \$200,000
- Resolution 2: Business Taxes including a flat rate of \$50 for the first \$350,000
- Resolution 3: Business Taxes including a flat rate of \$50 for the first \$500,000

and, if approved by City Council, 2) Authorizing the Submission of an argument on behalf of the City Council with designated author(s) and directing the City Attorney to prepare an impartial analysis of the Business Taxes Measure for the November 8, 2022 Ballot.

Prepared by: Karin Schnaider, Finance Director Sara Cowell, Accounting Manager

Reviewed by: Midori Lichtwardt, Assistant City Manager

Approved by: Michael Rogers, City Manager

ATTACHMENTS:

Resolution 1: Business Taxes including a flat rate of \$50 for the first \$200,000

A – Clean Copy: Chapter 6.04 Business Taxes – Code of Ordinance

B – Redline Strikethrough Copy: Chapter 6.04 Business Taxes – Code of Ordinance

Agenda Item 4

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Resolution 2: Business Taxes including a flat rate of \$50 for the first \$350,000

C – Clean Copy: Chapter 6.04 Business Taxes – Code of Ordinance

D – Redline Strikethrough Copy: Chapter 6.04 Business Taxes – Code of Ordinance

Resolution 3: Business Taxes including a flat rate of \$50 for the first \$500,000

E – Clean Copy: Chapter 6.04 Business Taxes – Code of Ordinance

F – Redline Strikethrough Copy: Chapter 6.04 Business Taxes – Code of Ordinance

G - Powerpoint Presentation

Chapter 6.04 BUSINESS TAXES

Sections:

- 6.04.010 Definitions.**
- 6.04.020 Revenue measure.**
- 6.04.030 Effect on other laws.**
- 6.04.040 Business tax payments required.**
- 6.04.050 Evidence of doing business.**
- 6.04.060 Constitutional apportionment.**
- 6.04.070 Exemptions.**
- 6.04.080 Posting and keeping tax certificates.**
- 6.04.090 Confidentiality and examination.**
- 6.04.100 Failure to file statements or corrected statements.**
- 6.04.110 Amount of business tax debt to city.**
- 6.04.120 Effect of convictions.**
- 6.04.130 Duty of city to issue tax certificates.**
- 6.04.140 Business taxes payable at City offices.**
- 6.04.150 Separate taxes required—Warehouses excepted.**
- 6.04.160 Tax certificate period.**
- 6.04.170 Business taxes—Payment, delinquencies, and penalties.**
- 6.04.180 Taxpayer information required.**
- 6.04.190 Subsequent tax payments.**
- 6.04.200 Extensions of filing dates—Interest charges.**
- 6.04.210 Refunds.**
- 6.04.220 Determinations of business classifications an administrative function.**
- 6.04.230 Applications for changes of business classifications.**
- 6.04.240 Appeals on decisions of business classifications.**
- 6.04.250 Rules and regulations.**
- 6.04.260 Referrals to other agencies—Prepayment of taxes.**
- 6.04.270 Enforcement.**

6.04.280 Remedies cumulative.

6.04.290 Severability.

6.04.300 Violations—Penalties.

6.04.310 Determination of tax due based on gross receipts plus annual registration tax.

Article 1. General Provisions

6.04.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

“Base Gross Receipt” means the first \$200,000 of Gross Receipt

"Business" means and includes full-time or part-time professional services and retail, wholesale, manufacturing, or other occupations, trades, or callings of any kind, whether or not carried on for profit or livelihood.

"Business tax" means the Business activity tax.

"City" means the City of Tracy, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

“Code” means the Tracy Municipal Code, as amended from time to time.

"Collector" means the Finance Director of the City or other designees charged by the Finance Director or City Manager of the City, as the case may be, with the administration of the provisions of this chapter.

“County” means the County of San Joaquin.

“Constitution” means the United States Constitution or the California Constitution, as the case may be.

"Employee" means all persons engaged in the operation or conduct of any Business, whether as a member of the owner's family, agent, manager, solicitor, and all other persons employed or working in said Business including, without limitations of the foregoing, all individuals who derive all or part of their income from commissioned sales. For purposes of computing tax based on employees, the average number of employees per year, as defined in this section, will be used.

"Fixed place of business" means premises in the City where a Business is conducted from day to day and regularly kept open for the purposes of such Business, also referred to as "regular place of business."

“Gross Receipts” means the total amount of the sale price of all sales, and/or the total amount charged or received for the performance of any act or service or employment, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act, service or employment is done as a part of or in connection with the sale of materials, goods, wares or merchandise, and when such act, service or employment occurs as a result of any activity within the City. Included in “gross receipts” shall be all receipts, cash, credits and property of any kind or nature, except as excluded in this subsection, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever as shown by either the Federal or State income tax return required to be filed by such person.

Where the Gross Receipts, as defined above, are less than the cost of operations of the Business, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations. Such cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges and other expenses.

Excluded from “gross receipts” shall be:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold;
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (d) Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;
- (e) Amounts collected for others where the Business is acting as an agent or trustee to the extent that such amounts are paid to those whom collected;
- (f) The amount of each single sale to a single customer in excess of fifty thousand dollars (\$50,000.00) where the gross profits derived therefrom does not exceed one percent (1%) of the sale price; and

The amount of gross receipts which has been the measure of a license tax paid to any other City. “Hearing officer” means an impartial person designated by the City Manager, as defined in Chapter 1.12 of the Tracy Municipal Code.

"Manufacturing" means making materials, raw or partly finished, into wares suitable for use by persons other than the manufacturer, including, but not limited to, fabrication, processing, packing, bottling, assembling, canning, compounding, and forging.

"Not-for-profit entities" means any organization that qualifies under Section 501, subsection (c) (3) of the United States Internal Revenue Code or equivalent federal statute.

"Peddler" means any person who goes from house to house or from place to place or in or along the streets of the City selling and making an immediate delivery, or offering for sale and immediate delivery, anything of value in his possession to persons other than dealers in such commodities.

"Person" means any individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, excepting: the United States of America, the State of California, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

"Solicitor" means a person engaged in soliciting, canvassing, or taking orders from house to house, or from place to place, or by telephone, or by any other means of communication for any goods, wares, or merchandise or any article to be delivered in the future, or for services to be performed in the future, or for making, manufacturing, or repairing any article whatsoever for future delivery, or for subscriptions to periodicals or tickets of admission to entertainments or memberships in any clubs.

"State" means the State of California.

"Sworn statement" means an affidavit sworn to before a person authorized to take oaths or a declaration or certification made under penalty of perjury.

"Tax Certificate" means the Business tax certificate and any other identifying decal or marker as may be required by the Collector for purposes of this Chapter 6.04.

"Tax Certificate Holder" means the Person to whom a Tax Certificate has been issued.

"Transient business" means every Business not conducted at a "fixed place of business" or at a regular place of Business, whether the person conducting such transient business is or is not a resident of the City.

"Warehousing business" means every Business conducted solely for the purpose of maintaining or renting space for the storage of any kind of property.

"Wholesale business" means every Business conducted solely for the purpose of selling goods, wares, or merchandise in wholesale lots for resale.

6.04.020 Revenue measure.

This chapter is enacted for the sole purpose of raising revenue for municipal purposes and is not intended for regulation. The issuance of any Tax certificate shall not be construed as authorizing any Business to operate without first complying with all other applicable laws and regulations.

6.04.030 Effect on other laws.

- (a) Persons required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of any similar tax for the privilege of doing such Business required by any other law of the City, the County or the State and shall remain subject to the regulatory provisions of those other laws.

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- (b) Any Person required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of such Business Tax, notwithstanding that such Business is not in compliance with zoning, health, safety, or other regulatory provisions of the Code or other State or federal law. Compliance with the provisions of this chapter shall not constitute evidence that such Business is in compliance with any other such regulations or provisions of law.

6.04.040 Required business tax payment.

- (a) It shall be unlawful for any person to transact and carry on any Business, trade, profession, calling, or occupation in the City without first having paid the Business Tax, as prescribed in this chapter or without complying with any and all applicable requirements of this chapter.
- (b) This section shall not be construed to require any Person to pay a Business Tax or to comply with any other requirement of this chapter prior to doing Business within the City if such requirements conflict with applicable statutes of the United States or of the State.

6.04.050 Evidence of doing business.

When any Person, by the use of signs, circulars, cards, telephone books, or newspapers, shall advertise, hold out, or represent that the Person is in Business in the City, or when any Person holds an active license or permit issued by a governmental agency indicating that the Person is in Business in the City, or when any Person makes a sale, takes an order, renders a commercial service, or performs any other similar act within the City, and such Person fails to deny by a sworn statement given to the Collector that the Person is not conducting a Business in the City after being requested to do so by the Collector, then such facts shall be considered prima facie evidence that the Person is conducting a Business in the City.

6.04.060 Constitutional apportionment.

- (a) None of the Business Taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the Equal Protection and Due Process Clauses of the Constitution (b) In any case where a Business Tax is believed by a Person transacting or carrying on any Business in the City to place an undue burden upon interstate commerce or be violative of such constitutional clauses, such Person may apply to the Collector for an adjustment of the tax. Such application may be made before or at the time the tax is required to be paid or within six (6) months after the payment of the prescribed Business Tax. The applicant, by sworn statement and supporting testimony, shall show the applicant's method of Business, the gross volume or estimated gross volume of such Business, and such other information as the Collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Collector shall then conduct an investigation and, after having first obtained the written approval of the City Attorney, shall fix as the Business Tax for the applicant an amount that is reasonable and nondiscriminatory or, if the Business Tax has already been paid,

shall order a refund of the amount over and above the Business Tax so fixed. Such investigation, fixing of the Business Tax, and order of refund shall be accomplished within a reasonable time upon receiving the requisite information by the City. In fixing the Business Tax, the Collector shall have the power to fix the Business Tax on any basis which will assure that the Business Tax assessed shall be uniform with that assessed on Businesses of like nature, so long as the amount assessed does not exceed the Business Tax prescribed by this chapter. If it is determined that no Business Tax is due, the applicant exempt from the Business Tax shall obtain, and the Collector shall issue, a Tax Certificate indicating such exemption from the tax.

6.04.070 Exemptions

- (a) Nothing contained in this chapter shall be deemed or construed as applying to any person transacting, engaging in, and carrying on any Business exempt by virtue of the Constitution or applicable statutes of the United States or of the State from payment of taxes prescribed herein.
- (b) Exemptions Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, except that any such Person shall be required to obtain a tax-exempt Tax Certificate:
 - (1) Not-for-profit entities, as defined in this Code;
 - (2) Banks, including national banking associations as provided by subsection 1(a) of Section 16 of Article XIII of the State Constitution; and
 - (2) Insurance companies and associations as provided by Section 14 of Article XIII of the State Constitution provided however that insurance brokers shall not be excluded under this section.
- (c) Exemptions Not Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, and shall not be required to obtain a tax-exempt Tax Certificate:
 - (1) Any delivery by a firm lacking a fixed place of Business in the City, which delivery is occasional and incidental to a Business carried on outside the City provided, however, that four (4) or more deliveries within any twelve (12) month period shall be considered proof that any further delivery is not occasional and incidental to such Business;
 - (2) Any public utility or other organization which is wholly owned and operated by a political subdivision of the State and any public district organized under the laws of the State; and
 - (3) Any vehicle which is subject to the Motor Carriers of Property Permit Fee Act (California Revenue and Taxation Code section 7231 et. al); provided, however, this exemption shall only apply to the transportation Business.
- (d) Claims for exemption. Any Person desiring to claim an exemption from the payment of a Business Tax and to have a free tax-exempt Tax Certificate issued shall make an

application therefor upon a form prescribed by the City and shall furnish such information and make such affidavits as may be required, on an annual basis. Upon the determination being made that the applicant is entitled to an exemption from the payment of the Business Tax for any reason set forth in this chapter, the City, upon the applicant complying with the provisions of this chapter or any other law of the City which may require a permit for the doing of the particular act proposed to be done, shall issue a free tax-exempt Tax Certificate to such Person, which certificate shall show upon its face that the Business is exempt from the Business Tax.

- (e) Revocation of exemptions. The City may revoke any tax-exempt Tax Certificate granted pursuant to the provisions of this chapter upon information that the Business is not entitled to the exemption as provided therein. In such revocation, the procedure to be followed and the right of appeal shall be as provided in this chapter for the determination of a disputed tax.
- (f) Sworn statements. The City may require the filing of a sworn statement from any person claiming to be excluded by the provisions of the section, which statement shall set forth all the facts upon which the exclusion is claimed.

6.04.080 Posting and keeping Tax Certificates – Record keeping.

- (a) Any Person carrying on Business at a fixed place of Business in the City shall keep the Tax Certificate posted in a conspicuous place on the premises where such Business is carried on.
- (b) Every Tax Certificate holder not having a fixed place of Business in the City shall keep the Tax Certificate upon his or her person, or if required by the Collector affixed in plain view upon any cart, vehicle, van, or other movable structure or device, at all times while transacting or carrying on the Business for which it is issued.
- (c) All Persons subject to the provisions of this chapter shall keep complete records of Business transactions, including sales, receipts, purchases, and other expenditures, and shall retain all such records for examination by the Collector. Such records shall be maintained for a period of at least three years. No Person required to keep records under this section shall refuse to allow authorized representatives of the Collector to examine said records at reasonable times and places.

6.04.090 Information confidentiality.

No statement shall be conclusive as to the matters set forth in any application filed under the provisions of this chapter and neither the filing thereof, the assessment or payment of any tax, nor the issuance of any Tax Certificate shall preclude the City from collecting by appropriate action such sum as is actually due and payable. Such statement, and each of the several items therein contained, shall be subject to audit and verification by the Finance Director, who is hereby authorized to examine, audit, and inspect such books and records of any Tax Certificate Holder or applicant for a Tax Certificate as may be necessary for the judgment of the Collector to verify or ascertain the amount of Business Tax due.

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- (a) It is unlawful for the Collector or any person having an administrative duty under the provisions of this chapter to make known in any manner whatever the Business affairs, operations, or information obtained by an investigation of records and equipment of any Person required to have a Tax Certificate, or pay a Business Tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or copy of either, or any book containing any abstract particulars thereof to be seen or examined by any person. Provided that nothing in this section shall be construed to prevent:
- (1) The disclosure to, or the examination of records and equipment by, another City official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter, or collecting taxes imposed hereunder;
 - (2) The disclosure of information to, or the examination of records by Federal or State officials, or the tax officials of another city or county, or city and county, if a reciprocal arrangement exists, or to a grand jury or court of law, upon subpoena;
 - (3) The disclosure of information and results of the examination of records of particular taxpayers, or relating to particular payers, to a court of law in a proceeding brought to determine the existence or amount of any Business Tax liability of the particular taxpayers to the City;
 - (4) The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included to the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Collector may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;
 - (5) The disclosure of the names and addresses of persons to whom Business Tax receipts have been issued, and the general type or nature of their Business;
 - (6) The disclosure by way of public meeting or otherwise of such information as may be necessary to the City Council in order to permit it to be fully advised as the facts when a taxpayer files a claim for refund of Business Taxes or submits an offer of compromise with regard to a claim asserted against him by the City for Business Taxes, or when acting upon any other matter;
 - (7) The disclosure of general statistics regarding taxes collected or Business done in the City.

6.04.100 Failure to file statements or corrected statements.

- (a) If any Person fails to file any required statement within the time prescribed, or if, after demand therefor made by the Collector, such Person fails to file a corrected statement, or

if any Person subject to the tax imposed by this chapter fails to submit the information required by the Collector necessary to determine the Business Tax due and payable, or if the Collector is not satisfied with the information supplied and the statement filed, the Collector may determine the amount of the Business Tax due from such Person by means of such information as he may be able to obtain.

- (b) If such a determination is made, the Collector shall give notice of the amount so assessed by serving such notice electronically, personally, or by depositing it in the United States Post Office, postage prepaid, addressed to the Person so assessed at his last known address.
- (c) Assessments so established shall be paid within fifteen (15) days after the mailing of such notice, subject to the provisions of section 6.04.180 of this chapter.

6.04.110 Amount of business tax debt to the city.

The amount of any Business Tax imposed by this chapter shall be deemed a debt to the City, and any Person carrying on any trade, calling, profession or occupation mentioned in this chapter without having a Tax Certificate from the City shall be liable to an action in the name of the City in any court of competent jurisdiction for the amount of the Business Tax by this chapter imposed on such trade, calling, profession, or occupation.

6.04.120 Effect of convictions.

The conviction and punishment of any Person for transacting any trade, calling, profession, or occupation without a tax shall not excuse or exempt such person from the payment of any Business Tax due or unpaid at the time of such conviction, and nothing in this chapter shall prevent a criminal prosecution for any violation of the provisions of this chapter.

6.04.130 Duty of City to issue business tax certificates.

- (a) It shall be the duty of the City to prepare and issue a Tax Certificate pursuant to the provisions of this chapter for every person liable to pay a Business Tax and to state in each Tax Certificate the period of time covered thereby; the name of the person or Business to whom issued; the Business classification to which the Tax Certificate is issued; the trade, calling, profession, or occupation to which the license certificate is issued and the location or place of Business where such trade, calling, profession, or occupation is to be carried
- (b) No Tax Certificate granted or issued under any provision of this chapter shall be in any manner transferred or assigned, nor shall such Tax Certificate authorize any Person, other than is therein mentioned or named, to not pay a Business Tax.
- (c) The City may make a charge of Ten (\$10.00) Dollars for each duplicate Tax Certificate issued to replace any Tax Certificate issued under the provisions of this chapter that has been lost or destroyed. In no case shall any mistake made by the City in stating the amount of a Business Tax prevent or prejudice the collection by the City of what shall be due from any Person carrying on a trade, calling, profession, or occupation subject to Business Tax under this chapter.

6.04.140 Business taxes payable at City offices.

All Business Taxes shall be paid in advance in lawful money of the United States to the City of Tracy, in a manner prescribed by the Collector.

6.04.150 Separate business tax certificate required - Warehouses excepted.

A separate Tax Certificate shall be obtained for each branch establishment or location. Warehouses and distributing establishments used in connection with and incidental to a Business Taxed under the provisions of this chapter shall not be deemed to be separate places of Business or branch establishments.

6.04.160 Business tax certificate period.

No Tax Certificate shall be issued for a period of more than twelve (12) months of the City's fiscal year beginning July 1 and ending June 30. Any application for a Tax Certificate received by the City mid-fiscal year will use a prospective estimate of how much the applicant would pay had they applied at the beginning of the Tax Certificate period.

6.04.170 Business taxes—Payment, delinquencies, and penalties.

- (a) All Business Taxes shall be due on the first day of July and delinquent at 5:00 p.m. on the last day of July.
- (b) For failure to pay a Business Tax when due, the Collector shall add a penalty of ten (10%) percent of such Business Tax on the first day of delinquency and shall add a further penalty of ten (10%) percent of such Business Tax on the first day of every subsequent calendar month following such first day of delinquency provided the amount of such penalties to be added shall in no event exceed fifty (50%) percent of the Business Tax due. The penalties provided in this subsection shall be assessed from the date when such deficiency was required to be paid pursuant to the provisions of this chapter.

6.04.180 Application - Initial.

- (a) Upon a Person making an application for the first Business Tax Certificate for a newly established or acquired Business, such Person shall furnish to the Collector a statement, upon a form provided by the Collector; setting forth the following information:
 - (1) The exact nature or kind of Business;
 - (2) The place where such Business is to be carried on, and if the same is not to be carried on at any permanent place of Business, the places of residence of the owners of same;
 - (3) In all cases where the amount of tax to be paid is measured by gross receipts, the application shall set forth such information as may be therein required and as may be necessary to determine the amount of the tax to be paid by the applicant;
 - (4) Any further information which the Collector may require.
 - (b) If the amount of the tax to be paid by the applicant is measured by gross receipts, he or she shall estimate the gross receipts for the period covered. Such estimate, if accepted by the Collector as reasonable, shall be used in determining the amount of tax to be paid by
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the applicant; provided, however, the amount of the tax so determined shall be tentative only, and such person shall, within 60 days after the expiration of the period covered, furnish the Collector with a statement, upon a form prescribed by the Collector, showing the applicant's actual gross receipts during the period covered, and the tax for such period shall be finally ascertained and paid in the manner provided by this chapter for the ascertaining and paying of such taxes, after deducting from the payment found to be due the amounts initially paid.

- (c) In all cases, the applicant shall, upon filing his or her application, pay no less than the prescribed minimum tax in advance, without being prorated, to cover the remaining portion of the current reporting period.
- (d) The Collector shall not issue to any such person another Business Tax Certificate for the same or any other Business until such Person shall have furnished to him or her a statement and paid the tax as herein required.

6.04.190 Application - Renewal.

In all cases, the applicant for the renewal of a Business Tax Certificate shall submit to the Collector for his or her guidance in ascertaining the amount of the tax to be paid by the applicant, a statement, upon a form prescribed by the Collector, setting forth such information concerning the applicant's Business during the preceding year as may be required by the Collector to enable him or her to ascertain the amount of the tax to be paid by said applicant pursuant to the provisions of this chapter. 6.04.200 Extensions of filing dates—Interest charges.

The Collector shall have the power, for good cause, to extend the time for filing any required sworn statement for a period not exceeding sixty (60) days and in such case to waive any penalty that would have otherwise accrued, except that twelve (12%) percent simple interest shall be added to any tax determined to be payable.

6.04.210 Refunds.

No refund of an overpayment of a Business Tax imposed by this chapter shall be allowed in whole or in part unless a claim for a refund is filed with the Collector within a period of one (1) years after the last day of the calendar month following the period for which the overpayment was made, and all such claims for refunds shall be filed with the Collector on forms the Collector furnishes in the manner prescribed by the Collector. Upon the filing of such a claim and when the Collector determines, in a reasonable time, that an overpayment has been made, the Collector may refund the amount overpaid.

6.04.220 Determinations of business classifications an administrative function.

The final determination of which Business or class of Business a Tax Certificate Holder or applicant for a Tax Certificate is engaged in, or about to engage in, shall be an administrative function of the City.

6.04.230 Applications for changes of business classifications.

- (a) In any case, where a Tax Certificate Holder or an applicant for a Tax Certificate believes that his or her Business is not assigned to the proper classification under this chapter because of circumstances peculiar to it, as distinguished from other Businesses of the same kind, he or she may apply to the Collector for reclassification. Such application shall contain such information as the Collector may deem necessary and require in order to determine whether the applicant's individual Business is properly classified. The Collector shall then conduct an investigation following which he or she shall assign the applicant's individual Business to the classification shown to be proper on the basis of such investigation. The proper classification is that classification which, in the opinion of the Collector, most nearly fits the applicant's Business. The reclassification shall not be retroactive but shall apply at the time of the next regularly ensuing calculation of the applicant's tax. No Business shall be classified more than once a year.
- (b) The Collector shall notify the applicant of the action taken on the application for reclassification. Such notice shall be given by serving it personally or by depositing it in the United States Post Office postage prepaid, addressed to the applicant at his or her last known address. Such applicant may, within 10 working days after the mailing or serving of such notices, make a written request to the Collector for a appeal hearing on the application's reclassification. If such a request is made within the time prescribed, the Collector shall cause the matter to be set for hearing before the City Council within 15 days. The Collector shall give the applicant at least 10 days' notice of the time and place of the hearing in the manner prescribed under section 1.12.020 for serving notice of the action taken on the application for reclassification. The City Council shall consider all evidence adduced and shall adopt a resolution reflecting its decision. The decision of the City Council shall be final.

6.04.240 Appeals on decisions of business classifications.

Any applicant or Tax Certificate Holder aggrieved by the Business classification decision of the City shall have the right of appeal to an impartial Hearing Officer as outlined by section 1.12.030 of the Code. Such appeal shall be taken by filing with the City Clerk, within fifteen (15) days after the notice of the decision of the City, a written statement setting forth the grounds for the appeal. The City Clerk shall set a time and place for a hearing on such appeal within thirty (30) days after the receipt of the appeal. Notwithstanding chapter 1.12 of the Code, the decisions and orders of the Hearing Officer shall be final and conclusive.

6.04.250 Rules and regulations.

The City Manager may promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary or desirable to aid in the enforcement of the provisions of this chapter.

6.04.260 Referrals to other agencies—Prepayment of taxes.

- (a) Referrals to other agencies. The Collector may refer to any governmental agency any statement and all other information submitted by persons subject to the provisions of this

chapter in connection with the conduct of a Business regulated or supervised or otherwise the concern of any such agency, including agencies concerned with health regulations, zoning conformance, fire safety, police considerations, or any other safeguard of the public interest. (b) Prepayment of taxes. The Collector may advise any person filing a statement in connection with the payment of a Business Tax for a new or other Business not actually in operation that such person may desire to defer the payment of the Business Tax until the person has obtained whatever approval may be required in order to transact and carry on the Business until such Business is actually in operation. If any person does, however, pay the Business Tax in advance of the commencement of the operation of the Business, but does not operate the Business because City or other governmental agency did not grant an approval which is required by regulation or law in order for such Business to be transacted and carried on, then the Business Tax shall be refunded in full, after the person has informed Collector in a timely manner, to the person having paid such tax minus the application fee as set by resolution of the City Council and revised from time to time.

6.04.270 Enforcement.

- (a) It shall be the duty of the Collector to enforce each and all of the provisions of this chapter, and the various City departments shall render such assistance in the enforcement as may from time to time be required by the Collector, City Manager, or City Council.
- (b) The Collector, in the exercise of the duties imposed upon the Collector shall examine, or cause to be examined, all places of Business in the City to ascertain whether the provisions of this chapter have been complied with.
- (c) The Collector, and each designee, and any police officer or duly authorized inspector, shall have the power and authority to enter free of charge at any reasonable time any place of Business or to question any person, which Business or person is, or there is reasonable cause to believe such Business or person may be, subject to the provision of this chapter, and demand an exhibition of proof of Business Tax payment.
- (d) The Collector's designees who have satisfactorily completed a certified course in "Powers of Arrest" may thereafter exercise the powers of arrest as specified in Section 836.5 of the California Penal Code on any person who has committed a misdemeanor or infraction in their presence which is a violation of the provisions of this chapter.

6.04.280 Remedies cumulative.

All remedies prescribed in this chapter shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

6.04.290 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

The City Council hereby declares that it would have adopted this chapter, and each section, subsection, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions be declared invalid or unconstitutional.

6.04.300 Violations—Penalties.

Any person violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring, or attempting to procure, the Business Tax certificate provided for in this chapter shall be deemed guilty of an infraction.

Article 2. Taxes

6.04.310 Determination of tax due based on gross receipts plus annual registration tax.

- (a) Every person who engages in Business within the City shall pay a Business Tax based upon Gross Receipts at the specified category rates listed in this section.
- (b) A flat rate of \$50 will be applied to the Base Gross Receipts, as defined by section 6.04.010, regardless of which category the Business falls under. If the Business makes less than the Base Gross Receipts but more than \$1, the Business will only pay \$50 in Business Tax. Any dollar amount in excess of the Base Gross Receipt, will be calculated by the rates below.

For example, if a Business has a Gross Receipt of \$300,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$200,000 [Base Gross Receipt]) + \$100 ($[\$300,000 - \$200,000] \times .001$) for a total of \$150 in Business Tax.

- (c) If a Business has no Gross Receipts, as defined in section 6.04.010, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations for such Business. The cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges, and other expenses.

- (d) Categories of Businesses:

- (1) CATEGORY 1: General retail, restaurants, hotels, and tour operators and any Business not otherwise classified ($0.001 \times$ Gross Receipts in excess of the Base Gross Receipts)

Example: If a Business has a Gross Receipt of \$400,000 and is a Category 1 Business, the total amount of tax the Business would pay would be \$50 (for the first \$200,000 [Base Gross Receipts]) + \$200 ($[\$400,000 - \$200,000] \times .001$) for a total of \$250 in Business Tax

- (A) Any establishment or Business that conducts retail (the sale of goods to ultimate consumers, usually in small quantities), or wholesale (the sale of goods in quantity, as to retailers or jobbers, for resale), or restaurant (an

establishment where meals, prepared food, and/or beverages are served to customers).

(B) "Tour operator" means a Business that provides tours in the City for Compensation.

(2) CATEGORY 2: Wholesale and Manufacturing (0.0015 X Gross Receipt in excess of the Base Gross Receipts):

Example: If a Business has a Gross Receipt of \$400,000 and is a Category 2 Business, the total amount of tax the Business would pay would be \$50 (for the first \$200,000 [Base Gross Receipts]) + \$300 $([\$400,000 - \$200,000] \times .0015)$ for a total of \$350 in Business Tax

(A) "Manufacturing" includes every person conducting or carrying on a Business consisting of manufacturing, packing, or processing any goods, wares, merchandise, or commodities at a fixed place of Business within the City or conducting or carrying on a Business of cold storage or refrigeration.

(3) CATEGORY 3: Contractors and Services (0.002 X Gross Receipt in excess of the Base Gross Receipt):

Example: If a Business has a Gross Receipt of \$400,000 and is a Category 3 Business, the total amount of tax the Business would pay would be \$50 (for the first \$200,000 [Base Gross Receipts]) + \$400 $([\$400,000 - \$200,000] \times .002)$ for a total of \$450 in Business Tax

(A) Contractors: every person, firm, or corporation conducting, managing, or carrying on the Business of contractor, subcontractor, or builder; or engaging in the construction or repair of any buildings; or engaged in any engineering, construction, operating, or advertising as such, or representing himself as such, and regularly employing help for building construction, sewer construction, plumbing construction or general construction.

(B) "Services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter, or section of this chapter, and shall include those professions that may require governmental certification or licensure, but not be limited to the services rendered by a person engaged in the practice or profession such as hairstylist, beautician or cosmetologist, aesthetician, or art instructor.

(4) CATEGORY 4: Professionals and Rental Units (Commercial and Residential) (0.003 X Gross Receipts in excess of the Base Gross Receipt):

Example: If a Business has a Gross Receipt of \$400,000 and is a Category 4 Business, the total amount of tax the Business would pay would be \$50 (for the first \$200,000 [Base Gross Receipts]) + \$600 $([\$400,000 - \$200,000] \times .003)$ for a total of \$650 in Business Tax

- (A) "Professional services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter or section of this chapter, and shall include those professions generally requiring governmental certification or a professional degree, but not be limited to the services rendered by a person engaged in the practice or profession of law, medicine, surgery, dentistry, ophthalmologist, optometry, chiropractic, osteopathy, chiropody, dental technician, laboratory technician, physical therapist, mortician, undertaker, psychologist, psychotherapy, radiologist, speech therapist, veterinary, licensed financial planner, licensed investment counselor, real estate agent, real estate broker, stock/bond or security agent or broker, civil, mechanical, electrical, industrial, or other class of engineer, surveyor, geologist, appraiser, architect, accountant, real estate management, property management, income tax preparers, bookkeepers, income tax consultants, developer, or marriage counselors.
- (B) Any Business, individual, or entity that leases, rents, or otherwise provides property to another individual or entity for compensation.

Chapter 6.04 BUSINESS TAXES

Sections:

- 6.04.010 Definitions.**
- 6.04.020 Revenue measure.**
- 6.04.030 Effect on other laws.**
- 6.04.040 Business tax payments required.**
- 6.04.050 Evidence of doing business.**
- 6.04.060 Constitutional apportionment.**
- 6.04.070 Exemptions.**
- 6.04.080 Posting and keeping tax certificates.**
- 6.04.090 Confidentiality and examination.**
- 6.04.100 Failure to file statements or corrected statements.**
- 6.04.110 Amount of business tax debt to city.**
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- 6.04.130 Duty of City to issue tax certificates.**
- 6.04.140 Business taxes payable at City offices.**
- 6.04.150 Separate taxes required—Warehouses excepted.**
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- 6.04.180 Taxpayer information required.**
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- 6.04.200 Extensions of filing dates—Interest charges.**
- 6.04.210 Refunds.**
- 6.04.220 Determinations of business classifications an administrative function.**
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6.04.280 Remedies cumulative.

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6.04.310 Determination of tax due based on gross receipt plus annual registration.

~~**6.04.330 Business tax per unit**~~

~~**6.04.340 Business tax—Gross receipts**~~

~~**6.04.350 Limitations on the use and Location of cigarette vending machines**~~

~~**6.04.360 Limit on the amount of tax**~~

Article 1. General Provisions

6.04.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

~~"Average number of employees" means to determine the average number of employees for the purpose of fixing the amount of business tax due under this definition, the employer shall make the following calculations: The number of individuals who worked an average of thirty two (32) hours or more each week during the period as shown on Form DE6 of the State of California shall be totaled (subtotal 1). The number of individuals who worked an average of less than thirty two (32) hours per week during the period shall be totaled, then divided by 2 (subtotal 2). All other employees as defined in subsection (f) of this section which are not shown on Form DE6 shall be totaled (subtotal 3). Subtotals 1, 2, and 3 shall be added together in order to arrive at a grand total of employees for the period. This method shall be followed for each of the four (4) preceding quarters. The grand total of employees for each of the four (4) quarters shall be added together and the sum divided by four (4) to arrive at the average numbers of employees. The sum shall be rounded to the nearest whole number.~~

~~In the case of beginning businesses, the number shall be estimated by the applicant and the fee paid based on the estimate, but shall be adjusted to the actual number within thirty (30) days after the close of the City's fiscal year.~~

"Base Gross Receipt" means the first \$200,000 of Gross Receipt

"Business" means and includes full-time or part-time professional services and retail, wholesale, manufacturing, or other occupations, trades, or callings of any kind, whether or not carried on for profit or livelihood.

"Business tax" means the Business activity tax.

"City" means the City of Tracy, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

"Code" means the Tracy Municipal Code, as amended from time to time.

"Collector" means the Finance Director of the City or other designees charged by the Finance Director or City Manager of the City, as the case may be, with the administration of the provisions of this chapter.

"County" means the County of San Joaquin.

"Constitution" means the United States Constitution or the California Constitution, as the case may be.

"Employee" means all persons engaged in the operation or conduct of any Business, whether as a member of the owner's family, agent, manager, solicitor, and all other persons employed or working in said Business including, without limitations of the foregoing, all individuals who derive all or part of their income from commissioned sales. For purposes of computing tax based on employees, the average number of employees per year, as defined in this section, will be used.

"Fixed place of business" means premises in the City where a Business is conducted from day to day and regularly kept open for the purposes of such Business, also referred to as "regular place of business."

"Gross Receipts" means the total amount of the sale price of all sales, and/or the total amount charged or received for the performance of any act or service or employment, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act, service or employment is done as a part of or in connection with the sale of materials, goods, wares or merchandise, and when such act, service or employment occurs as a result of any activity within the City. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, except as excluded in this subsection, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever as shown by either the Federal or State income tax return required to be filed by such person.

Where the Gross Receipts, as defined above, are less than the cost of operations of the Business, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations. Such cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges and other expenses.

Excluded from "gross receipts" shall be:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold;
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

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- (d) Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;
 - (e) Amounts collected for others where the Business is acting as an agent or trustee to the extent that such amounts are paid to those whom collected;
 - (f) The amount of each single sale to a single customer in excess of fifty thousand dollars (\$50,000.00) where the gross profits derived therefrom does not exceed one percent (1%) of the sale price; and

The amount of gross receipts which has been the measure of a license tax paid to any other City. "Hearing officer" means an impartial person designated by the City Manager, as defined in Chapter 1.12 of the Tracy Municipal Code.

~~"License certificate" means the business license tax certificate and any other identifying decal or marker as may be required by the Collector.~~

~~"License certificate holder" means the person, natural or otherwise, to whom a business license tax certificate has been issued.~~

"Manufacturing" means making materials, raw or partly finished, into wares suitable for use by persons other than the manufacturer, including, but not limited to, fabrication, processing, packing, bottling, assembling, canning, compounding, and forging.

"Not-for-profit entities" means any organization that qualifies under Section 501, subsection (c) (3) of the United States Internal Revenue Code or equivalent federal statute.

"Peddler" means any person who goes from house to house or from place to place or in or along the streets of the City selling and making an immediate delivery, or offering for sale and immediate delivery, anything of value in his possession to persons other than dealers in such commodities.

"Person" means any individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, excepting: the United States of America, the State of California, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

"Solicitor" means a person engaged in soliciting, canvassing, or taking orders from house to house, or from place to place, or by telephone, or by any other means of communication for any goods, wares, or merchandise or any article to be delivered in the future, or for services to be performed in the future, or for making, manufacturing, or repairing any article whatsoever for future delivery, or for subscriptions to periodicals or tickets of admission to entertainments or memberships in any clubs.

"State" means the State of California.

"Sworn statement" means an affidavit sworn to before a person authorized to take oaths or a declaration or certification made under penalty of perjury.

"Tax Certificate" means the Business tax certificate and any other identifying decal or marker as may be required by the Collector for purposes of this Chapter 6.04.

"Tax Certificate Holder" means the Person to whom a Tax Certificate has been issued.

"Transient business" means every Business not conducted at a "fixed place of business" or at a regular place of Business, whether the person conducting such transient business is or is not a resident of the City.

"Warehousing business" means every Business conducted solely for the purpose of maintaining or renting space for the storage of any kind of property.

"Wholesale business" means every Business conducted solely for the purpose of selling goods, wares, or merchandise in wholesale lots for resale.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.020 Revenue measure.

This chapter is enacted for the sole purpose of raising revenue for municipal purposes and is not intended for regulation. The issuance of any Tax certificate shall not be construed as authorizing any Business to operate without first complying with all other applicable laws and regulations.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.030 Effect on other laws.

- (a) Persons required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of any similar tax for the privilege of doing such Business required by any other law of the City, the County or the State and shall remain subject to the regulatory provisions of those other laws.
- (b) Any Person required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of such Business Tax, notwithstanding that such Business is not in compliance with zoning, health, safety, or other regulatory provisions of the Code or other State or federal law. Compliance with the provisions of this chapter shall not constitute evidence that such Business is in compliance with any other such regulations or provisions of law.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.040 Required business tax payment.

- (a) It shall be unlawful for any person to transact and carry on any Business, trade, profession, calling, or occupation in the City without first having paid the Business Tax, as prescribed in this chapter or without complying with any and all applicable requirements of this chapter.

-
- (b) This section shall not be construed to require any Person to pay a Business Tax or to comply with any other requirement of this chapter prior to doing Business within the City if such requirements conflict with applicable statutes of the United States or of the State.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.050 Evidence of doing business.

When any Person, by the use of signs, circulars, cards, telephone books, or newspapers, shall advertise, hold out, or represent that the Person is in Business in the City, or when any Person holds an active license or permit issued by a governmental agency indicating that the Person is in Business in the City, or when any Person makes a sale, takes an order, renders a commercial service, or performs any other similar act within the City, and such Person fails to deny by a sworn statement given to the Collector that the Person is not conducting a Business in the City after being requested to do so by the Collector, then such facts shall be considered prima facie evidence that the Person is conducting a Business in the City.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.060 Constitutional apportionment.

- (a) None of the Business Taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the Equal Protection and Due Process Clauses of the Constitution (b) In any case where a Business Tax is believed by a Person transacting or carrying on any Business in the City to place an undue burden upon interstate commerce or be violative of such constitutional clauses, such Person may apply to the Collector for an adjustment of the tax. Such application may be made before or at the time the tax is required to be paid or within six (6) months after the payment of the prescribed Business Tax. The applicant, by sworn statement and supporting testimony, shall show the applicant's method of Business, the gross volume or estimated gross volume of such Business, and such other information as the Collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Collector shall then conduct an investigation and, after having first obtained the written approval of the City Attorney, shall fix as the Business Tax for the applicant an amount that is reasonable and nondiscriminatory or, if the Business Tax has already been paid, shall order a refund of the amount over and above the Business Tax so fixed. Such investigation, fixing of the Business Tax, and order of refund shall be accomplished within a reasonable time upon receiving the requisite information by the City. In fixing the Business Tax, the Collector shall have the power to fix the Business Tax on any basis which will assure that the Business Tax assessed shall be uniform with that assessed on Businesses of like nature, so long as the amount assessed does not exceed the Business Tax prescribed by this chapter. If it is determined that no Business Tax is due, the applicant exempt from the Business Tax shall obtain, and the Collector shall issue, a Tax Certificate indicating such exemption from the tax.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.070 Exemptions

- (a) Nothing contained in this chapter shall be deemed or construed as applying to any person transacting, engaging in, and carrying on any Business exempt by virtue of the Constitution or applicable statutes of the United States or of the State from payment of taxes prescribed herein.
- (b) Exemptions Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, except that any such Person shall be required to obtain a tax-exempt Tax Certificate:
 - (1) Not-for-profit entities, as defined in this Code;
 - (2) Banks, including national banking associations as provided by subsection 1(a) of Section 16 of Article XIII of the State Constitution; and
 - (2) Insurance companies and associations as provided by Section 14 of Article XIII of the State Constitution provided however that insurance brokers shall not be excluded under this section.
- (c) Exemptions Not Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, and shall not be required to obtain a tax-exempt Tax Certificate:
 - (1) Any delivery by a firm lacking a fixed place of Business in the City, which delivery is occasional and incidental to a Business carried on outside the City provided, however, that four (4) or more deliveries within any twelve (12) month period shall be considered proof that any further delivery is not occasional and incidental to such Business;
 - (2) Any public utility or other organization which is wholly owned and operated by a political subdivision of the State and any public district organized under the laws of the State; and
 - (3) Any vehicle which is subject to the Motor Carriers of Property Permit Fee Act (California Revenue and Taxation Code section 7231 et. al); provided, however, this exemption shall only apply to the transportation Business.
- (d) Claims for exemption. Any Person desiring to claim an exemption from the payment of a Business Tax and to have a free tax-exempt Tax Certificate issued shall make an application therefor upon a form prescribed by the City and shall furnish such information and make such affidavits as may be required, on an annual basis. Upon the determination being made that the applicant is entitled to an exemption from the payment of the Business Tax for any reason set forth in this chapter, the City, upon the applicant complying with the provisions of this chapter or any other law of the City which may require a permit for the doing of the particular act proposed to be done, shall issue a free

tax-exempt Tax Certificate to such Person, which certificate shall show upon its face that the Business is exempt from the Business Tax.

- (e) Revocation of exemptions. The City may revoke any tax-exempt Tax Certificate granted pursuant to the provisions of this chapter upon information that the Business is not entitled to the exemption as provided therein. In such revocation, the procedure to be followed and the right of appeal shall be as provided in this chapter for the determination of a disputed tax.
- (f) Sworn statements. The City may require the filing of a sworn statement from any person claiming to be excluded by the provisions of the section, which statement shall set forth all the facts upon which the exclusion is claimed.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.080 Posting and keeping Tax Certificates – Record keeping.

- (a) Any Person carrying on Business at a fixed place of Business in the City shall keep the Tax Certificate posted in a conspicuous place on the premises where such Business is carried on.
- (b) Every Tax Certificate holder not having a fixed place of Business in the City shall keep the Tax Certificate upon his or her person, or if required by the Collector affixed in plain view upon any cart, vehicle, van, or other movable structure or device, at all times while transacting or carrying on the Business for which it is issued.
- (c) All Persons subject to the provisions of this chapter shall keep complete records of Business transactions, including sales, receipts, purchases, and other expenditures, and shall retain all such records for examination by the Collector. Such records shall be maintained for a period of at least three years. No Person required to keep records under this section shall refuse to allow authorized representatives of the Collector to examine said records at reasonable times and places.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.090 Information confidentiality.

No statement shall be conclusive as to the matters set forth in any application filed under the provisions of this chapter and neither the filing thereof, the assessment or payment of any tax, nor the issuance of any Tax Certificate shall preclude the City from collecting by appropriate action such sum as is actually due and payable. Such statement, and each of the several items therein contained, shall be subject to audit and verification by the Finance Director, who is hereby authorized to examine, audit, and inspect such books and records of any Tax Certificate Holder or applicant for a Tax Certificate as may be necessary for the judgment of the Collector to verify or ascertain the amount of Business Tax due.

- (a) It is unlawful for the Collector or any person having an administrative duty under the provisions of this chapter to make known in any manner whatever the Business affairs,

operations, or information obtained by an investigation of records and equipment of any Person required to have a Tax Certificate, or pay a Business Tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or copy of either, or any book containing any abstract particulars thereof to be seen or examined by any person. Provided that nothing in this section shall be construed to prevent:

- (1) The disclosure to, or the examination of records and equipment by, another City official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter, or collecting taxes imposed hereunder;
- (2) The disclosure of information to, or the examination of records by Federal or State officials, or the tax officials of another city or county, or city and county, if a reciprocal arrangement exists, or to a grand jury or court of law, upon subpoena;
- (3) The disclosure of information and results of the examination of records of particular taxpayers, or relating to particular payers, to a court of law in a proceeding brought to determine the existence or amount of any Business Tax liability of the particular taxpayers to the City;
- (4) The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included to the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Collector may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;
- (5) The disclosure of the names and addresses of persons to whom Business Tax receipts have been issued, and the general type or nature of their Business;
- (6) The disclosure by way of public meeting or otherwise of such information as may be necessary to the City Council in order to permit it to be fully advised as the facts when a taxpayer files a claim for refund of Business Taxes or submits an offer of compromise with regard to a claim asserted against him by the City for Business Taxes, or when acting upon any other matter;
- (7) The disclosure of general statistics regarding taxes collected or Business done in the City.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.100 Failure to file statements or corrected statements.

- (a) If any Person fails to file any required statement within the time prescribed, or if, after demand therefor made by the Collector, such Person fails to file a corrected statement, or

if any Person subject to the tax imposed by this chapter fails to submit the information required by the Collector necessary to determine the Business Tax due and payable, or if the Collector is not satisfied with the information supplied and the statement filed, the Collector may determine the amount of the Business Tax due from such Person by means of such information as he may be able to obtain.

- (b) If such a determination is made, the Collector shall give notice of the amount so assessed by serving such notice electronically, personally, or by depositing it in the United States Post Office, postage prepaid, addressed to the Person so assessed at his last known address.
- (c) Assessments so established shall be paid within fifteen (15) days after the mailing of such notice, subject to the provisions of section 6.04.180 of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.110 Amount of business tax debt to the city.

The amount of any Business Tax imposed by this chapter shall be deemed a debt to the City, and any Person carrying on any trade, calling, profession or occupation mentioned in this chapter without having a Tax Certificate from the City shall be liable to an action in the name of the City in any court of competent jurisdiction for the amount of the Business Tax by this chapter imposed on such trade, calling, profession, or occupation.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.120 Effect of convictions.

The conviction and punishment of any Person for transacting any trade, calling, profession, or occupation without a tax shall not excuse or exempt such person from the payment of any Business Tax due or unpaid at the time of such conviction, and nothing in this chapter shall prevent a criminal prosecution for any violation of the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.130 Duty of City to issue business tax certificates.

- (a) It shall be the duty of the City to prepare and issue a Tax Certificate pursuant to the provisions of this chapter for every person liable to pay a Business Tax and to state in each Tax Certificate the period of time covered thereby; the name of the person or Business to whom issued; the Business classification to which the Tax Certificate is issued; the trade, calling, profession, or occupation to which the license certificate is issued and the location or place of Business where such trade, calling, profession, or occupation is to be carried(b)
No Tax Certificate granted or issued under any provision of this chapter shall be in any manner transferred or assigned, nor shall such Tax Certificate authorize any Person, other than is therein mentioned or named, to not pay a Business Tax.
- (c) The City may make a charge of Ten (\$10.00) Dollars for each duplicate Tax Certificate issued to replace any Tax Certificate issued under the provisions of this chapter that has

been lost or destroyed. In no case shall any mistake made by the City in stating the amount of a Business Tax prevent or prejudice the collection by the City of what shall be due from any Person carrying on a trade, calling, profession, or occupation subject to Business Tax under this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.140 Business taxes payable at City offices.

All Business Taxes shall be paid in advance in lawful money of the United States to the City of Tracy, in a manner prescribed by the Collector.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.150 Separate business tax certificate required—Warehouses excepted.

A separate Tax Certificate shall be obtained for each branch establishment or location. Warehouses and distributing establishments used in connection with and incidental to a Business Taxed under the provisions of this chapter shall not be deemed to be separate places of Business or branch establishments.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.160 Business tax certificate period.

No Tax Certificate shall be issued for a period of more than twelve (12) months of the City's fiscal year beginning July 1 and ending June 30. Any application for a Tax Certificate received by the City mid-fiscal year will use a prospective estimate of how much the applicant would pay had they applied at the beginning of the Tax Certificate period.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.170 Business taxes—Payment, delinquencies, and penalties.

- (a) All Business Taxes shall be due on the first day of July and delinquent at 5:00 p.m. on the last day of July.
- (b) For failure to pay a Business Tax when due, the Collector shall add a penalty of ten (10%) percent of such Business Tax on the first day of delinquency and shall add a further penalty of ten (10%) percent of such Business Tax on the first day of every subsequent calendar month following such first day of delinquency provided the amount of such penalties to be added shall in no event exceed fifty (50%) percent of the Business Tax due. The penalties provided in this subsection shall be assessed from the date when such deficiency was required to be paid pursuant to the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.180 Application - Initial.

- (a) Upon a Person making an application for the first Business Tax Certificate for a newly established or acquired Business, such Person shall furnish to the Collector a statement, upon a form provided by the Collector; setting forth the following information:
 - (1) The exact nature or kind of Business;
 - (2) The place where such Business is to be carried on, and if the same is not to be carried on at any permanent place of Business, the places of residence of the owners of same;
 - (3) In all cases where the amount of tax to be paid is measured by gross receipts, the application shall set forth such information as may be therein required and as may be necessary to determine the amount of the tax to be paid by the applicant;
 - (4) Any further information which the Collector may require.
- (b) If the amount of the tax to be paid by the applicant is measured by gross receipts, he or she shall estimate the gross receipts for the period covered. Such estimate, if accepted by the Collector as reasonable, shall be used in determining the amount of tax to be paid by the applicant; provided, however, the amount of the tax so determined shall be tentative only, and such person shall, within 60 days after the expiration of the period covered, furnish the Collector with a statement, upon a form prescribed by the Collector, showing the applicant's actual gross receipts during the period covered, and the tax for such period shall be finally ascertained and paid in the manner provided by this chapter for the ascertaining and paying of such taxes, after deducting from the payment found to be due the amounts initially paid.
- (c) In all cases, the applicant shall, upon filing his or her application, pay no less than the prescribed minimum tax in advance, without being prorated, to cover the remaining portion of the current reporting period.
- (d) The Collector shall not issue to any such person another Business Tax Certificate for the same or any other Business until such Person shall have furnished to him or her a statement and paid the tax as herein required.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.190 Application - Renewal.

In all cases, the applicant for the renewal of a Business Tax Certificate shall submit to the Collector for his or her guidance in ascertaining the amount of the tax to be paid by the applicant, a statement, upon a form prescribed by the Collector, setting forth such information concerning the applicant's Business during the preceding year as may be required by the Collector to enable him or her to ascertain the amount of the tax to be paid by said applicant pursuant to the provisions of this chapter. ~~(Ord. 1044 § 1 (part), 2002)~~

6.04.200 Extensions of filing dates—Interest charges.

The Collector shall have the power, for good cause, to extend the time for filing any required sworn statement for a period not exceeding sixty (60) days and in such case to waive any penalty that would have otherwise accrued, except that twelve (12%) percent simple interest shall be added to any tax determined to be payable.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.210 Refunds.

No refund of an overpayment of a Business Tax imposed by this chapter shall be allowed in whole or in part unless a claim for a refund is filed with the Collector within a period of one (1) years after the last day of the calendar month following the period for which the overpayment was made, and all such claims for refunds shall be filed with the Collector on forms the Collector furnishes in the manner prescribed by the Collector. Upon the filing of such a claim and when the Collector determines, in a reasonable time, that an overpayment has been made, the Collector may refund the amount overpaid.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.220 Determinations of business classifications an administrative function.

The final determination of which Business or class of Business a Tax Certificate Holder or applicant for a Tax Certificate is engaged in, or about to engage in, shall be an administrative function of the City.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.230 Applications for changes of business classifications.

- (a) In any case, where a Tax Certificate Holder or an applicant for a Tax Certificate believes that his or her Business is not assigned to the proper classification under this chapter because of circumstances peculiar to it, as distinguished from other Businesses of the same kind, he or she may apply to the Collector for reclassification. Such application shall contain such information as the Collector may deem necessary and require in order to determine whether the applicant's individual Business is properly classified. The Collector shall then conduct an investigation following which he or she shall assign the applicant's individual Business to the classification shown to be proper on the basis of such investigation. The proper classification is that classification which, in the opinion of the Collector, most nearly fits the applicant's Business. The reclassification shall not be retroactive but shall apply at the time of the next regularly ensuing calculation of the applicant's tax. No Business shall be classified more than once a year.
- (b) The Collector shall notify the applicant of the action taken on the application for reclassification. Such notice shall be given by serving it personally or by depositing it in the United States Post Office postage prepaid, addressed to the applicant at his or her last known address. Such applicant may, within 10 working days after the mailing or serving of

such notices, make a written request to the Collector for a appeal hearing on the application's reclassification. If such a request is made within the time prescribed, the Collector shall cause the matter to be set for hearing before the City Council within 15 days. The Collector shall give the applicant at least 10 days' notice of the time and place of the hearing in the manner prescribed under section 1.12.020 for serving notice of the action taken on the application for reclassification. The City Council shall consider all evidence adduced and shall adopt a resolution reflecting its decision. The decision of the City Council shall be final.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.240 Appeals on decisions of business classifications.

Any applicant or Tax Certificate Holder aggrieved by the Business classification decision of the City shall have the right of appeal to an impartial Hearing Officer as outlined by section 1.12.030 of the Code. Such appeal shall be taken by filing with the City Clerk, within fifteen (15) days after the notice of the decision of the City, a written statement setting forth the grounds for the appeal. The City Clerk shall set a time and place for a hearing on such appeal within thirty (30) days after the receipt of the appeal. Notwithstanding chapter 1.12 of the Code, the decisions and orders of the Hearing Officer shall be final and conclusive.

~~(Ord. 1111 § 4 Exh. A (part), 2007; Ord. 1044 § 1 (part), 2002)~~

6.04.250 Rules and regulations.

The City Manager may promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary or desirable to aid in the enforcement of the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.260 Referrals to other agencies—Prepayment of taxes.

- (a) Referrals to other agencies. The Collector may refer to any governmental agency any statement and all other information submitted by persons subject to the provisions of this chapter in connection with the conduct of a Business regulated or supervised or otherwise the concern of any such agency, including agencies concerned with health regulations, zoning conformance, fire safety, police considerations, or any other safeguard of the public interest. (b) Prepayment of taxes. The Collector may advise any person filing a statement in connection with the payment of a Business Tax for a new or other Business not actually in operation that such person may desire to defer the payment of the Business Tax until the person has obtained whatever approval may be required in order to transact and carry on the Business until such Business is actually in operation. If any person does, however, pay the Business Tax in advance of the commencement of the operation of the Business, but does not operate the Business because City or other governmental agency did not grant an approval which is required by regulation or law in order for such Business to be transacted and carried on, then the Business Tax shall be refunded in full, after the

person has informed Collector in a timely manner, to the person having paid such tax minus the application fee as set by resolution of the City Council and revised from time to time.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.270 Enforcement.

- (a) It shall be the duty of the Collector to enforce each and all of the provisions of this chapter, and the various City departments shall render such assistance in the enforcement as may from time to time be required by the Collector, City Manager, or City Council.
- (b) The Collector, in the exercise of the duties imposed upon the Collector shall examine, or cause to be examined, all places of Business in the City to ascertain whether the provisions of this chapter have been complied with.
- (c) The Collector, and each designee, and any police officer or duly authorized inspector, shall have the power and authority to enter free of charge at any reasonable time any place of Business or to question any person, which Business or person is, or there is reasonable cause to believe such Business or person may be, subject to the provision of this chapter, and demand an exhibition of proof of Business Tax payment.
- (d) The Collector's designees who have satisfactorily completed a certified course in "Powers of Arrest" may thereafter exercise the powers of arrest as specified in Section 836.5 of the California Penal Code on any person who has committed a misdemeanor or infraction in their presence which is a violation of the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.280 Remedies cumulative.

All remedies prescribed in this chapter shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.290 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have adopted this chapter, and each section, subsection, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions be declared invalid or unconstitutional.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.300 Violations—Penalties.

Any person violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring, or attempting to procure, the Business Tax certificate provided for in this chapter shall be deemed guilty of an infraction.

~~(Ord. 1044 § 1 (part), 2002)~~

Article 2. Taxes

~~6.04.310 Business tax per average number of employees.~~

~~Each person transacting and carrying on a business not specifically classified by other sections of this chapter shall pay an annual business tax of One hundred and no/100ths (\$100.00) Dollars which covers one owner, plus the sum of Twenty and no/100ths (\$20.00) Dollars for each additional employee or owner. Said business tax shall be determined annually based upon the average number of employees of the business in the City's preceding year.~~

~~Business taxes under this section for new businesses commenced on or after the first day of October shall be prorated as follows:~~

Date of commencement of business	Pro-rated tax
October 1 through December 31	$\frac{3}{4}$ of annual business tax
January 1 through March 31	$\frac{1}{2}$ of annual business tax
April 1 through June 30	$\frac{1}{4}$ of annual business tax

~~(Ord. 1044 § 1 (part), 2002)~~

~~6.04.320 Business tax—Flat fee.~~

~~Every person who carries on the following business activities within the City shall pay a business tax based upon the rates and in the classifications set forth below:~~

- ~~Advertising;~~
- ~~Amusements;~~
- ~~Auctioneers;~~
- ~~Card tables;~~
- ~~Contractors;~~
- ~~Dances;~~
- ~~Fire sales, bankruptcy, close-out;~~
- ~~Outside business;~~
- ~~Palmistry;~~
- ~~Peddlers;~~

Solicitors;
Street musicians, Entertainers;
Christmas tree lots, Pumpkin patches;

~~(a) Advertising. For accomplishing advertising for others by the following means, the business taxes shall be:~~

~~(1) By handbills, dodgers, stickers, advertising samples, circulars, booklets, or similar devices, Eight and no/100ths (\$8.00) Dollars per day or Twenty Eight and no/100ths (\$28.00) Dollars per quarter for each person engaged in the distribution or managing the distribution thereof (see sections 4.12.1140 through 4.12.1170 of this code);~~

~~(2) By outdoor billboards, Eighty and no/100ths (\$80.00) Dollars per year, or fraction thereof, for each billboard;~~

~~(3) By means of stereopticon, biograph, searchlight, moving pictures, or similar devices, Twenty Five and no/100ths (\$25.00) Dollars per month for each machine or device. The provisions of this subsection shall not apply to licensed motion picture theaters; and~~

~~(4) By amplified sound or display advertisements over ten (10') feet in any dimension attached to a ground or airborne vehicle, Fifteen and no/100ths (\$15.00) Dollars per month per vehicle.~~

~~(b) Amusements.~~

~~(1) The business taxes for amusement rides and similar concessions shall be Seven and no/100ths (\$7.00) Dollars per day or Thirty and no/100ths (\$30.00) Dollars per quarter, or fraction thereof, for each such ride or concession.~~

~~(2) The business taxes for carnivals, circuses or tent shows shall be Four Hundred and no/100ths (\$400.00) Dollars for the first day and Two Hundred Fifty and no/100ths (\$250.00) Dollars for each additional day. When a carnival or circus tax is paid, no additional license shall be required for the concessions, shows, or rides within the carnival.~~

~~(c) Auctioneers. (See article 7 of chapter 4.12 of this Code).~~

~~(d) Card tables and card rooms. (See sections 4.04.030 and 4.04.040 of this Code).~~

~~(e) Contractors. The business taxes for general contractors, subcontractors, and specialty contractors not having a fixed place of business within the City shall be One Hundred Twenty and no/100ths (\$120.00) Dollars per year or Forty and no/100ths (\$40.00) Dollars per quarter, or fractional part thereof.~~

~~(f) Dances. (See article 2 of chapter 4.04 of this Code).~~

~~(g) Outside businesses. Every person not having a fixed place of business within the City who engages in business within the City and is not subject to the other~~

provisions of this chapter shall have the option to pay a business tax at the same rate prescribed in this chapter for persons engaged in the same type of business and having a fixed place of business within the City, or pay a flat rate of One hundred (\$100.00) Dollars.

- ~~(h) Palmistry. (See section 4.12.180 of this Code).~~
- ~~(i) Peddlers and candy and lunch wagons, stands, and vehicles. The business taxes for each peddler and each candy and lunch wagon, stand, kiosk or vehicle shall be Twenty Five and no/100ths (\$25.00) Dollars per quarter, or fractional part thereof.~~
- ~~(j) Solicitors.
 - ~~(1) Every person conducting the business of soliciting within the City shall pay a business tax of One Hundred and no/100ths (\$100.00) Dollars quarterly or Ten and no/100ths (\$10.00) Dollars per day with a three day minimum. No credit shall be received for any daily tax paid in the event a quarterly License certificate is thereafter obtained.~~
 - ~~(2) The payment of such license tax shall not relieve any solicitor from obtaining a permit, as provided in section 4.12.200 and following.~~
 - ~~(3) Where a payment or deposit is demanded in advance of the final delivery, a bond shall be furnished to the City by each such person engaged in the business of canvassing, soliciting, or taking orders for goods, wares, merchandise, or any article or for services to be performed.

Such bond shall be in the penal sum of Five Hundred and no/100ths (\$500.00) Dollars executed by a surety company acceptable to the City, or in lieu thereof, a cash bond of equal amount, conditioned upon the making of the final delivery of the goods ordered or services to be performed, in accordance with the terms in such order, or, failing therein, that the advance payment on such order be refunded within sixty (60) days after the contract delivery date.~~~~
- ~~(k) Street musicians/Entertainers. The business taxes for street musicians or entertainers shall be Fifteen and no/100ths (\$15.00) Dollars per day per operator or employee.~~
- ~~(l) Christmas tree lots and pumpkin patches. Christmas tree lots and pumpkin patches shall pay a business tax of One Hundred and no/100ths (\$100.00) Dollars per season, except where business is conducted in connection with another regularly established place of business for which a License certificate has been issued.~~

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.330 Business tax per unit.

Every person transacting and carrying on the businesses or activities herein enumerated shall pay a business tax as follows:

~~(a) Rental property.~~

- ~~(1) Any person owning and conducting, operating, renting, or leasing a rooming house, boardinghouse, apartment house, lodging house, trailer park, mobile home court, three or more residential units, or commercial building, with the exception of hotels and motels, shall pay annually the following business tax: Sixty and no/100ths (\$60.00) Dollars for the first six (6) units plus Five and no/100ths (\$5.00) Dollars for each additional unit over six (6). The provisions of this section shall not apply to subleases. A unit is defined as an individual house, a living space in a multiple dwelling, or a defined space within a commercial building.~~
- ~~(2) The provisions of this section shall apply to persons engaged in renting, or leasing real property to governmental entities.~~
- ~~(3) The taxes provided for in this section shall be in addition to any business tax which may be required to be paid by real estate brokers, agents, or other persons engaged in business and taxed pursuant to other provisions of this chapter.~~

~~Business taxes under this section for new businesses commenced on or after the first day of October shall be pro-rated as follows:~~

Date of Commencement of Business	Pro-rated Tax
October 1 through December 31	¾ of annual business tax
January 1 through March 31	½ of annual business tax
April 1 through June 30	¼ of annual business tax

- ~~(b) Delivery vehicles. Every person who collects, gathers, picks up or loads goods, wares or merchandise within the City, or who delivers good, wares or merchandise within the City from or to a point inside or outside the City by means of a motor vehicle four (4) or more times within any twelve (12) month period, is assessed a business tax in the sum of Ninety and no/100ths (\$90.00) Dollars for the first vehicle plus Twenty Five and no/100ths (\$25.00) Dollars for each additional vehicle.~~

~~(1) A vehicle delivering to or for a person who is a License certificate holder with a fixed place of business within the City shall be exempt from the provisions of this section when such vehicle is the property of that person.~~

~~{Ord. 1044 § 1 (part), 2002}~~

~~6.04.340 Business tax—Gross receipts.~~

~~Any person engaged in the business of selling merchandise, services, or information by means of coin-operated devices in the City shall pay a business tax per fiscal year, or fractional part thereof, for each dollars of gross receipts derived there from as follows:~~

ANNUAL GROSS SALES OR RECEIPTS	ANNUAL BUSINESS TAX
Under \$10,000.00	\$25.00
\$10,001.00 to \$30,000.00	35.00
\$30,001.00 to \$50,000.00	55.00
\$50,001.00 and over	75.00

~~In addition, upon renewals such person shall furnish information on the number of such devices used in such business. In the event any such device shall be located in the City without having been so registered, such device may be impounded by the City until claimed and registered and a license certificate is obtained by such claimant. Applications for the license certificates required by this chapter shall be made to the Collector on forms the Collector provides, shall be signed by the applicant, and shall contain the following information in addition to whatever additional information the Collector deems necessary:~~

- ~~(a) The name, occupation, and address of the applicant;~~
- ~~(b) The location of the premises where the electrical musical device, vending machine, or weighing machine is to be placed, maintained to be operated, or operated, and, if such devices are to be placed, maintained to be operated, or operated in connection with any other business or calling, the character of such business or calling and the nature of the owner of such business or calling;~~
- ~~(c) A complete description of the type of device, showing the name of the machine and any identifying number or other identifying features and the manner in which it is to be placed, maintained, or operated;~~
- ~~(d) The nature of the applicant's interest in or title to the device for which the license certificate is sought, and, if the applicant does not own the device, the name of the owner of such device; and~~
- ~~(e) If the application is for a license certificate to operate and/or maintain a vending machine for cigarettes or other tobacco products, a complete statement as to the~~

manner in which the provisions of section 6.04.350 of this Article shall be complied with.

~~(Ord. 1044 § 1 (part), 2002)~~

~~6.04.350 Limitations on the use and locations of cigarette vending machines.~~

~~It is unlawful to own, operate, or maintain a vending machine for cigarettes or other tobacco products within the City unless:~~

- ~~(a) The machine is located within a building; and~~
- ~~(b) For all hours during which the public has access to such building where the machine is located, there is an adult clerk or attendant on duty who will be responsible for supervising the operation of such machine.~~

~~(Ord. 1044 § 1 (part), 2002)~~

~~6.04.360 Limit on amount of tax.~~

~~Notwithstanding any provisions of this Article, the maximum business tax assessable to each business subject to a business tax under this Article shall be Two Thousand and no/100ths (\$2,000.00) Dollars per year.~~

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.310 Determination of tax due based on gross receipts plus annual registration tax.

- (a) Every person who engages in Business within the City shall pay a Business Tax based upon Gross Receipts at the specified category rates listed in this section.
- (b) A flat rate of \$50 will be applied to the Base Gross Receipts, as defined by section 6.04.010, regardless of which category the Business falls under. If the Business makes less than the Base Gross Receipts but more than \$1, the Business will only pay \$50 in Business Tax. Any dollar amount in excess of the Base Gross Receipt, will be calculated by the rates below.
For example, if a Business has a Gross Receipt of \$300,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$200,000 [Base Gross Receipt]) + \$100 ([\$300,000-\$200,000] x .001) for a total of \$150 in Business Tax.
- (c) If a Business has no Gross Receipts, as defined in section 6.04.010, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations for such Business. The cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges, and other expenses.

(d) Categories of Businesses:

(1) CATEGORY 1: General retail, restaurants, hotels, and tour operators and any Business not otherwise classified (0.001 X Gross Receipts in excess of the Base Gross Receipts)

Example: If a Business has a Gross Receipt of \$400,000 and is a Category 1 Business, the total amount of tax the Business would pay would be \$50 (for the first \$200,000 [Base Gross Receipts]) + \$200 ([$\$400,000 - \$200,000$] x .001) for a total of \$250 in Business Tax

(A) Any establishment or Business that conducts retail (the sale of goods to ultimate consumers, usually in small quantities), or wholesale (the sale of goods in quantity, as to retailers or jobbers, for resale), or restaurant (an establishment where meals, prepared food, and/or beverages are served to customers).

(B) “Tour operator” means a Business that provides tours in the City for Compensation.

(2) CATEGORY 2: Wholesale and Manufacturing (0.0015 X Gross Receipt in excess of the Base Gross Receipts):

Example: If a Business has a Gross Receipt of \$400,000 and is a Category 2 Business, the total amount of tax the Business would pay would be \$50 (for the first \$200,000 [Base Gross Receipts]) + \$300 ([$\$400,000 - \$200,000$] x .0015) for a total of \$350 in Business Tax

(A) “Manufacturing” includes every person conducting or carrying on a Business consisting of manufacturing, packing, or processing any goods, wares, merchandise, or commodities at a fixed place of Business within the City or conducting or carrying on a Business of cold storage or refrigeration.

(3) CATEGORY 3: Contractors and Services (0.002 X Gross Receipt in excess of the Base Gross Receipt):

Example: If a Business has a Gross Receipt of \$400,000 and is a Category 3 Business, the total amount of tax the Business would pay would be \$50 (for the first \$200,000 [Base Gross Receipts]) + \$400 ([$\$400,000 - \$200,000$] x .002) for a total of \$450 in Business Tax

(A) Contractors: every person, firm, or corporation conducting, managing, or carrying on the Business of contractor, subcontractor, or builder; or engaging in the construction or repair of any buildings; or engaged in any engineering, construction, operating, or advertising as such, or representing himself as such, and regularly employing help for building construction, sewer construction, plumbing construction or general construction.

(B) “Services” means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter, or section of this chapter, and shall include those professions that may require governmental certification or licensure, but not be limited to the services rendered by a person engaged in the practice or profession such as hairstylist, beautician or cosmetologist, aesthetician, or art instructor.

(4) CATEGORY 4: Professionals and Rental Units (Commercial and Residential) (0.003 X Gross Receipts in excess of the Base Gross Receipt):

[Example: If a Business has a Gross Receipt of \$400,000 and is a Category 4 Business, the total amount of tax the Business would pay would be \$50 (for the first \$200,000 [Base Gross Receipts]) + \$600 ([\$400,000-\$200,000] x .003) for a total of \$650 in Business Tax]

(A) “Professional services” means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter or section of this chapter, and shall include those professions generally requiring governmental certification or a professional degree, but not be limited to the services rendered by a person engaged in the practice or profession of law, medicine, surgery, dentistry, ophthalmologist, optometry, chiropractic, osteopathy, chiropody, dental technician, laboratory technician, physical therapist, mortician, undertaker, psychologist, psychotherapy, radiologist, speech therapist, veterinary, licensed financial planner, licensed investment counselor, real estate agent, real estate broker, stock/bond or security agent or broker, civil, mechanical, electrical, industrial, or other class of engineer, surveyor, geologist, appraiser, architect, accountant, real estate management, property management, income tax preparers, bookkeepers, income tax consultants, developer, or marriage counselors.

(B) Any Business, individual, or entity that leases, rents, or otherwise provides property to another individual or entity for compensation.

Chapter 6.04 BUSINESS TAXES

Sections:

- 6.04.010 Definitions.**
- 6.04.020 Revenue measure.**
- 6.04.030 Effect on other laws.**
- 6.04.040 Business tax payments required.**
- 6.04.050 Evidence of doing business.**
- 6.04.060 Constitutional apportionment.**
- 6.04.070 Exemptions.**
- 6.04.080 Posting and keeping tax certificates.**
- 6.04.090 Confidentiality and examination.**
- 6.04.100 Failure to file statements or corrected statements.**
- 6.04.110 Amount of business tax debt to city.**
- 6.04.120 Effect of convictions.**
- 6.04.130 Duty of City to issue tax certificates.**
- 6.04.140 Business taxes payable at City offices.**
- 6.04.150 Separate taxes required—Warehouses excepted.**
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- 6.04.170 Business taxes—Payment, delinquencies, and penalties.**
- 6.04.180 Taxpayer information required.**
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- 6.04.200 Extensions of filing dates—Interest charges.**
- 6.04.210 Refunds.**
- 6.04.220 Determinations of business classifications an administrative function.**
- 6.04.230 Applications for changes of business classifications.**
- 6.04.240 Appeals on decisions of business classifications.**
- 6.04.250 Rules and regulations.**
- 6.04.260 Referrals to other agencies—Prepayment of taxes.**
- 6.04.270 Enforcement.**

6.04.280 Remedies cumulative.

6.04.290 Severability.

6.04.300 Violations—Penalties.

6.04.310 Determination of tax due based on gross receipt plus annual registration.

Article 1. General Provisions

6.04.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

“Base Gross Receipt” means the first \$350,000 of Gross Receipt

"Business" means and includes full-time or part-time professional services and retail, wholesale, manufacturing, or other occupations, trades, or callings of any kind, whether or not carried on for profit or livelihood.

"Business tax" means the Business activity tax.

"City" means the City of Tracy, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

“Code” means the Tracy Municipal Code, as amended from time to time.

"Collector" means the Finance Director of the City or other designees charged by the Finance Director or City Manager of the City, as the case may be, with the administration of the provisions of this chapter.

“County” means the County of San Joaquin.

“Constitution” means the United States Constitution or the California Constitution, as the case may be.

"Employee" means all persons engaged in the operation or conduct of any Business, whether as a member of the owner's family, agent, manager, solicitor, and all other persons employed or working in said Business including, without limitations of the foregoing, all individuals who derive all or part of their income from commissioned sales. For purposes of computing tax based on employees, the average number of employees per year, as defined in this section, will be used.

"Fixed place of business" means premises in the City where a Business is conducted from day to day and regularly kept open for the purposes of such Business, also referred to as "regular place of business."

“Gross Receipts” means the total amount of the sale price of all sales, and/or the total amount charged or received for the performance of any act or service or employment, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act, service or employment is done as a part of or in connection with the sale of materials, goods, wares or merchandise, and when such act, service or employment occurs as a result of any activity within the City. Included in “gross receipts” shall be all receipts, cash, credits and property of any kind or nature, except as excluded in this subsection, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever as shown by either the Federal or State income tax return required to be filed by such person.

Where the Gross Receipts, as defined above, are less than the cost of operations of the Business, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations. Such cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges and other expenses.

Excluded from “gross receipts” shall be:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold;
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (d) Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;
- (e) Amounts collected for others where the Business is acting as an agent or trustee to the extent that such amounts are paid to those whom collected;
- (f) The amount of each single sale to a single customer in excess of fifty thousand dollars (\$50,000.00) where the gross profits derived therefrom does not exceed one percent (1%) of the sale price; and

The amount of gross receipts which has been the measure of a license tax paid to any other City. “Hearing officer” means an impartial person designated by the City Manager, as defined in Chapter 1.12 of the Tracy Municipal Code.

"Manufacturing" means making materials, raw or partly finished, into wares suitable for use by persons other than the manufacturer, including, but not limited to, fabrication, processing, packing, bottling, assembling, canning, compounding, and forging.

"Not-for-profit entities" means any organization that qualifies under Section 501, subsection (c) (3) of the United States Internal Revenue Code or equivalent federal statute.

"Peddler" means any person who goes from house to house or from place to place or in or along the streets of the City selling and making an immediate delivery, or offering for sale and immediate delivery, anything of value in his possession to persons other than dealers in such commodities.

"Person" means any individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, excepting: the United States of America, the State of California, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

"Solicitor" means a person engaged in soliciting, canvassing, or taking orders from house to house, or from place to place, or by telephone, or by any other means of communication for any goods, wares, or merchandise or any article to be delivered in the future, or for services to be performed in the future, or for making, manufacturing, or repairing any article whatsoever for future delivery, or for subscriptions to periodicals or tickets of admission to entertainments or memberships in any clubs.

"State" means the State of California.

"Sworn statement" means an affidavit sworn to before a person authorized to take oaths or a declaration or certification made under penalty of perjury.

"Tax Certificate" means the Business tax certificate and any other identifying decal or marker as may be required by the Collector for purposes of this Chapter 6.04.

"Tax Certificate Holder" means the Person to whom a Tax Certificate has been issued.

"Transient business" means every Business not conducted at a "fixed place of business" or at a regular place of Business, whether the person conducting such transient business is or is not a resident of the City.

"Warehousing business" means every Business conducted solely for the purpose of maintaining or renting space for the storage of any kind of property.

"Wholesale business" means every Business conducted solely for the purpose of selling goods, wares, or merchandise in wholesale lots for resale.

6.04.020 Revenue measure.

This chapter is enacted for the sole purpose of raising revenue for municipal purposes and is not intended for regulation. The issuance of any Tax certificate shall not be construed as authorizing any Business to operate without first complying with all other applicable laws and regulations.

6.04.030 Effect on other laws.

- (a) Persons required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of any similar tax for the privilege of doing such Business required by any other law of the City, the County or the State and shall remain subject to the regulatory provisions of those other laws.

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- (b) Any Person required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of such Business Tax, notwithstanding that such Business is not in compliance with zoning, health, safety, or other regulatory provisions of the Code or other State or federal law. Compliance with the provisions of this chapter shall not constitute evidence that such Business is in compliance with any other such regulations or provisions of law.

6.04.040 Required business tax payment.

- (a) It shall be unlawful for any person to transact and carry on any Business, trade, profession, calling, or occupation in the City without first having paid the Business Tax, as prescribed in this chapter or without complying with any and all applicable requirements of this chapter.
- (b) This section shall not be construed to require any Person to pay a Business Tax or to comply with any other requirement of this chapter prior to doing Business within the City if such requirements conflict with applicable statutes of the United States or of the State.

6.04.050 Evidence of doing business.

When any Person, by the use of signs, circulars, cards, telephone books, or newspapers, shall advertise, hold out, or represent that the Person is in Business in the City, or when any Person holds an active license or permit issued by a governmental agency indicating that the Person is in Business in the City, or when any Person makes a sale, takes an order, renders a commercial service, or performs any other similar act within the City, and such Person fails to deny by a sworn statement given to the Collector that the Person is not conducting a Business in the City after being requested to do so by the Collector, then such facts shall be considered prima facie evidence that the Person is conducting a Business in the City.

6.04.060 Constitutional apportionment.

- (a) None of the Business Taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the Equal Protection and Due Process Clauses of the Constitution
- (b) In any case where a Business Tax is believed by a Person transacting or carrying on any Business in the City to place an undue burden upon interstate commerce or be violative of such constitutional clauses, such Person may apply to the Collector for an adjustment of the tax. Such application may be made before or at the time the tax is required to be paid or within six (6) months after the payment of the prescribed Business Tax. The applicant, by sworn statement and supporting testimony, shall show the applicant's method of Business, the gross volume or estimated gross volume of such Business, and such other information as the Collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Collector shall then conduct an investigation and, after having first obtained the written approval of the City Attorney, shall fix as the Business Tax for the applicant an amount that is reasonable and nondiscriminatory or, if the Business Tax has already been paid, shall order a refund of the amount over and above the Business Tax so fixed. Such investigation, fixing of the Business Tax, and order

of refund shall be accomplished within a reasonable time upon receiving the requisite information by the City. In fixing the Business Tax, the Collector shall have the power to fix the Business Tax on any basis which will assure that the Business Tax assessed shall be uniform with that assessed on Businesses of like nature, so long as the amount assessed does not exceed the Business Tax prescribed by this chapter. If it is determined that no Business Tax is due, the applicant exempt from the Business Tax shall obtain, and the Collector shall issue, a Tax Certificate indicating such exemption from the tax.

6.04.070 Exemptions

- (a) Nothing contained in this chapter shall be deemed or construed as applying to any person transacting, engaging in, and carrying on any Business exempt by virtue of the Constitution or applicable statutes of the United States or of the State from payment of taxes prescribed herein.
- (b) Exemptions Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, except that any such Person shall be required to obtain a tax-exempt Tax Certificate:
 - (1) Not-for-profit entities, as defined in this Code;
 - (2) Banks, including national banking associations as provided by subsection 1(a) of Section 16 of Article XIII of the State Constitution; and
 - (2) Insurance companies and associations as provided by Section 14 of Article XIII of the State Constitution provided however that insurance brokers shall not be excluded under this section.
- (c) Exemptions Not Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, and shall not be required to obtain a tax-exempt Tax Certificate:
 - (1) Any delivery by a firm lacking a fixed place of Business in the City, which delivery is occasional and incidental to a Business carried on outside the City provided, however, that four (4) or more deliveries within any twelve (12) month period shall be considered proof that any further delivery is not occasional and incidental to such Business;
 - (2) Any public utility or other organization which is wholly owned and operated by a political subdivision of the State and any public district organized under the laws of the State; and
 - (3) Any vehicle which is subject to the Motor Carriers of Property Permit Fee Act (California Revenue and Taxation Code section 7231 et. al); provided, however, this exemption shall only apply to the transportation Business.
- (d) Claims for exemption. Any Person desiring to claim an exemption from the payment of a Business Tax and to have a free tax-exempt Tax Certificate issued shall make an application therefor upon a form prescribed by the City and shall furnish such information and make such affidavits as may be required, on an annual basis. Upon the determination

being made that the applicant is entitled to an exemption from the payment of the Business Tax for any reason set forth in this chapter, the City, upon the applicant complying with the provisions of this chapter or any other law of the City which may require a permit for the doing of the particular act proposed to be done, shall issue a free tax-exempt Tax Certificate to such Person, which certificate shall show upon its face that the Business is exempt from the Business Tax.

- (e) Revocation of exemptions. The City may revoke any tax-exempt Tax Certificate granted pursuant to the provisions of this chapter upon information that the Business is not entitled to the exemption as provided therein. In such revocation, the procedure to be followed and the right of appeal shall be as provided in this chapter for the determination of a disputed tax.
- (f) Sworn statements. The City may require the filing of a sworn statement from any person claiming to be excluded by the provisions of the section, which statement shall set forth all the facts upon which the exclusion is claimed.

6.04.080 Posting and keeping Tax Certificates – Record keeping.

- (a) Any Person carrying on Business at a fixed place of Business in the City shall keep the Tax Certificate posted in a conspicuous place on the premises where such Business is carried on.
- (b) Every Tax Certificate holder not having a fixed place of Business in the City shall keep the Tax Certificate upon his or her person, or if required by the Collector affixed in plain view upon any cart, vehicle, van, or other movable structure or device, at all times while transacting or carrying on the Business for which it is issued.
- (c) All Persons subject to the provisions of this chapter shall keep complete records of Business transactions, including sales, receipts, purchases, and other expenditures, and shall retain all such records for examination by the Collector. Such records shall be maintained for a period of at least three years. No Person required to keep records under this section shall refuse to allow authorized representatives of the Collector to examine said records at reasonable times and places.

6.04.090 Information confidentiality.

No statement shall be conclusive as to the matters set forth in any application filed under the provisions of this chapter and neither the filing thereof, the assessment or payment of any tax, nor the issuance of any Tax Certificate shall preclude the City from collecting by appropriate action such sum as is actually due and payable. Such statement, and each of the several items therein contained, shall be subject to audit and verification by the Finance Director, who is hereby authorized to examine, audit, and inspect such books and records of any Tax Certificate Holder or applicant for a Tax Certificate as may be necessary for the judgment of the Collector to verify or ascertain the amount of Business Tax due.

- (a) It is unlawful for the Collector or any person having an administrative duty under the provisions of this chapter to make known in any manner whatever the Business affairs,

operations, or information obtained by an investigation of records and equipment of any Person required to have a Tax Certificate, or pay a Business Tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or copy of either, or any book containing any abstract particulars thereof to be seen or examined by any person. Provided that nothing in this section shall be construed to prevent:

- (1) The disclosure to, or the examination of records and equipment by, another City official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter, or collecting taxes imposed hereunder;
- (2) The disclosure of information to, or the examination of records by Federal or State officials, or the tax officials of another city or county, or city and county, if a reciprocal arrangement exists, or to a grand jury or court of law, upon subpoena;
- (3) The disclosure of information and results of the examination of records of particular taxpayers, or relating to particular payers, to a court of law in a proceeding brought to determine the existence or amount of any Business Tax liability of the particular taxpayers to the City;
- (4) The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included to the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Collector may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;
- (5) The disclosure of the names and addresses of persons to whom Business Tax receipts have been issued, and the general type or nature of their Business;
- (6) The disclosure by way of public meeting or otherwise of such information as may be necessary to the City Council in order to permit it to be fully advised as the facts when a taxpayer files a claim for refund of Business Taxes or submits an offer of compromise with regard to a claim asserted against him by the City for Business Taxes, or when acting upon any other matter;
- (7) The disclosure of general statistics regarding taxes collected or Business done in the City.

6.04.100 Failure to file statements or corrected statements.

- (a) If any Person fails to file any required statement within the time prescribed, or if, after demand therefor made by the Collector, such Person fails to file a corrected statement, or if any Person subject to the tax imposed by this chapter fails to submit the information required by the Collector necessary to determine the Business Tax due and payable, or if

the Collector is not satisfied with the information supplied and the statement filed, the Collector may determine the amount of the Business Tax due from such Person by means of such information as he may be able to obtain.

- (b) If such a determination is made, the Collector shall give notice of the amount so assessed by serving such notice electronically, personally, or by depositing it in the United States Post Office, postage prepaid, addressed to the Person so assessed at his last known address.
- (c) Assessments so established shall be paid within fifteen (15) days after the mailing of such notice, subject to the provisions of section 6.04.180 of this chapter.

6.04.110 Amount of business tax debt to the city.

The amount of any Business Tax imposed by this chapter shall be deemed a debt to the City, and any Person carrying on any trade, calling, profession or occupation mentioned in this chapter without having a Tax Certificate from the City shall be liable to an action in the name of the City in any court of competent jurisdiction for the amount of the Business Tax by this chapter imposed on such trade, calling, profession, or occupation.

6.04.120 Effect of convictions.

The conviction and punishment of any Person for transacting any trade, calling, profession, or occupation without a tax shall not excuse or exempt such person from the payment of any Business Tax due or unpaid at the time of such conviction, and nothing in this chapter shall prevent a criminal prosecution for any violation of the provisions of this chapter.

6.04.130 Duty of City to issue business tax certificates.

- (a) It shall be the duty of the City to prepare and issue a Tax Certificate pursuant to the provisions of this chapter for every person liable to pay a Business Tax and to state in each Tax Certificate the period of time covered thereby; the name of the person or Business to whom issued; the Business classification to which the Tax Certificate is issued; the trade, calling, profession, or occupation to which the license certificate is issued and the location or place of Business where such trade, calling, profession, or occupation is to be carried(b)
 - No Tax Certificate granted or issued under any provision of this chapter shall be in any manner transferred or assigned, nor shall such Tax Certificate authorize any Person, other than is therein mentioned or named, to not pay a Business Tax.
- (c) The City may make a charge of Ten (\$10.00) Dollars for each duplicate Tax Certificate issued to replace any Tax Certificate issued under the provisions of this chapter that has been lost or destroyed. In no case shall any mistake made by the City in stating the amount of a Business Tax prevent or prejudice the collection by the City of what shall be due from any Person carrying on a trade, calling, profession, or occupation subject to Business Tax under this chapter.

6.04.140 Business taxes payable at City offices.

All Business Taxes shall be paid in advance in lawful money of the United States to the City of Tracy, in a manner prescribed by the Collector.

6.04.150 Separate business tax certificate required—Warehouses excepted.

A separate Tax Certificate shall be obtained for each branch establishment or location. Warehouses and distributing establishments used in connection with and incidental to a Business Taxed under the provisions of this chapter shall not be deemed to be separate places of Business or branch establishments.

6.04.160 Business tax certificate period.

No Tax Certificate shall be issued for a period of more than twelve (12) months of the City's fiscal year beginning July 1 and ending June 30. Any application for a Tax Certificate received by the City mid-fiscal year will use a prospective estimate of how much the applicant would pay had they applied at the beginning of the Tax Certificate period.

6.04.170 Business taxes—Payment, delinquencies, and penalties.

- (a) All Business Taxes shall be due on the first day of July and delinquent at 5:00 p.m. on the last day of July.
- (b) For failure to pay a Business Tax when due, the Collector shall add a penalty of ten (10%) percent of such Business Tax on the first day of delinquency and shall add a further penalty of ten (10%) percent of such Business Tax on the first day of every subsequent calendar month following such first day of delinquency provided the amount of such penalties to be added shall in no event exceed fifty (50%) percent of the Business Tax due. The penalties provided in this subsection shall be assessed from the date when such deficiency was required to be paid pursuant to the provisions of this chapter.

6.04.180 Application - Initial.

- (a) Upon a Person making an application for the first Business Tax Certificate for a newly established or acquired Business, such Person shall furnish to the Collector a statement, upon a form provided by the Collector; setting forth the following information:
 - (1) The exact nature or kind of Business;
 - (2) The place where such Business is to be carried on, and if the same is not to be carried on at any permanent place of Business, the places of residence of the owners of same;
 - (3) In all cases where the amount of tax to be paid is measured by gross receipts, the application shall set forth such information as may be therein required and as may be necessary to determine the amount of the tax to be paid by the applicant;
 - (4) Any further information which the Collector may require.
 - (b) If the amount of the tax to be paid by the applicant is measured by gross receipts, he or she shall estimate the gross receipts for the period covered. Such estimate, if accepted by
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the Collector as reasonable, shall be used in determining the amount of tax to be paid by the applicant; provided, however, the amount of the tax so determined shall be tentative only, and such person shall, within 60 days after the expiration of the period covered, furnish the Collector with a statement, upon a form prescribed by the Collector, showing the applicant's actual gross receipts during the period covered, and the tax for such period shall be finally ascertained and paid in the manner provided by this chapter for the ascertaining and paying of such taxes, after deducting from the payment found to be due the amounts initially paid.

- (c) In all cases, the applicant shall, upon filing his or her application, pay no less than the prescribed minimum tax in advance, without being prorated, to cover the remaining portion of the current reporting period.
- (d) The Collector shall not issue to any such person another Business Tax Certificate for the same or any other Business until such Person shall have furnished to him or her a statement and paid the tax as herein required.

6.04.190 Application - Renewal.

In all cases, the applicant for the renewal of a Business Tax Certificate shall submit to the Collector for his or her guidance in ascertaining the amount of the tax to be paid by the applicant, a statement, upon a form prescribed by the Collector, setting forth such information concerning the applicant's Business during the preceding year as may be required by the Collector to enable him or her to ascertain the amount of the tax to be paid by said applicant pursuant to the provisions of this chapter.

6.04.200 Extensions of filing dates—Interest charges.

The Collector shall have the power, for good cause, to extend the time for filing any required sworn statement for a period not exceeding sixty (60) days and in such case to waive any penalty that would have otherwise accrued, except that twelve (12%) percent simple interest shall be added to any tax determined to be payable.

6.04.210 Refunds.

No refund of an overpayment of a Business Tax imposed by this chapter shall be allowed in whole or in part unless a claim for a refund is filed with the Collector within a period of one (1) years after the last day of the calendar month following the period for which the overpayment was made, and all such claims for refunds shall be filed with the Collector on forms the Collector furnishes in the manner prescribed by the Collector. Upon the filing of such a claim and when the Collector determines, in a reasonable time, that an overpayment has been made, the Collector may refund the amount overpaid.

6.04.220 Determinations of business classifications an administrative function.

The final determination of which Business or class of Business a Tax Certificate Holder or applicant for a Tax Certificate is engaged in, or about to engage in, shall be an administrative function of the City.

6.04.230 Applications for changes of business classifications.

- (a) In any case, where a Tax Certificate Holder or an applicant for a Tax Certificate believes that his or her Business is not assigned to the proper classification under this chapter because of circumstances peculiar to it, as distinguished from other Businesses of the same kind, he or she may apply to the Collector for reclassification. Such application shall contain such information as the Collector may deem necessary and require in order to determine whether the applicant's individual Business is properly classified. The Collector shall then conduct an investigation following which he or she shall assign the applicant's individual Business to the classification shown to be proper on the basis of such investigation. The proper classification is that classification which, in the opinion of the Collector, most nearly fits the applicant's Business. The reclassification shall not be retroactive but shall apply at the time of the next regularly ensuing calculation of the applicant's tax. No Business shall be classified more than once a year.
- (b) The Collector shall notify the applicant of the action taken on the application for reclassification. Such notice shall be given by serving it personally or by depositing it in the United States Post Office postage prepaid, addressed to the applicant at his or her last known address. Such applicant may, within 10 working days after the mailing or serving of such notices, make a written request to the Collector for a appeal hearing on the application's reclassification. If such a request is made within the time prescribed, the Collector shall cause the matter to be set for hearing before the City Council within 15 days. The Collector shall give the applicant at least 10 days' notice of the time and place of the hearing in the manner prescribed under section 1.12.020 for serving notice of the action taken on the application for reclassification. The City Council shall consider all evidence adduced and shall adopt a resolution reflecting its decision. The decision of the City Council shall be final.

6.04.240 Appeals on decisions of business classifications.

Any applicant or Tax Certificate Holder aggrieved by the Business classification decision of the City shall have the right of appeal to an impartial Hearing Officer as outlined by section 1.12.030 of the Code. Such appeal shall be taken by filing with the City Clerk, within fifteen (15) days after the notice of the decision of the City, a written statement setting forth the grounds for the appeal. The City Clerk shall set a time and place for a hearing on such appeal within thirty (30) days after the receipt of the appeal. Notwithstanding chapter 1.12 of the Code, the decisions and orders of the Hearing Officer shall be final and conclusive.

6.04.250 Rules and regulations.

The City Manager may promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary or desirable to aid in the enforcement of the provisions of this chapter.

6.04.260 Referrals to other agencies—Prepayment of taxes.

- (a) Referrals to other agencies. The Collector may refer to any governmental agency any statement and all other information submitted by persons subject to the provisions of this chapter in connection with the conduct of a Business regulated or supervised or otherwise the concern of any such agency, including agencies concerned with health regulations, zoning conformance, fire safety, police considerations, or any other safeguard of the public interest. (b) Prepayment of taxes. The Collector may advise any person filing a statement in connection with the payment of a Business Tax for a new or other Business not actually in operation that such person may desire to defer the payment of the Business Tax until the person has obtained whatever approval may be required in order to transact and carry on the Business until such Business is actually in operation. If any person does, however, pay the Business Tax in advance of the commencement of the operation of the Business, but does not operate the Business because City or other governmental agency did not grant an approval which is required by regulation or law in order for such Business to be transacted and carried on, then the Business Tax shall be refunded in full, after the person has informed Collector in a timely manner, to the person having paid such tax minus the application fee as set by resolution of the City Council and revised from time to time.

6.04.270 Enforcement.

- (a) It shall be the duty of the Collector to enforce each and all of the provisions of this chapter, and the various City departments shall render such assistance in the enforcement as may from time to time be required by the Collector, City Manager, or City Council.
- (b) The Collector, in the exercise of the duties imposed upon the Collector shall examine, or cause to be examined, all places of Business in the City to ascertain whether the provisions of this chapter have been complied with.
- (c) The Collector, and each designee, and any police officer or duly authorized inspector, shall have the power and authority to enter free of charge at any reasonable time any place of Business or to question any person, which Business or person is, or there is reasonable cause to believe such Business or person may be, subject to the provision of this chapter, and demand an exhibition of proof of Business Tax payment.
- (d) The Collector's designees who have satisfactorily completed a certified course in "Powers of Arrest" may thereafter exercise the powers of arrest as specified in Section 836.5 of the California Penal Code on any person who has committed a misdemeanor or infraction in their presence which is a violation of the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.280 Remedies cumulative.

All remedies prescribed in this chapter shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

6.04.290 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have adopted this chapter, and each section, subsection, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions be declared invalid or unconstitutional.

6.04.300 Violations—Penalties.

Any person violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring, or attempting to procure, the Business Tax certificate provided for in this chapter shall be deemed guilty of an infraction.

Article 2. Taxes

6.04.310 Determination of tax due based on gross receipts plus annual registration tax.

- (a) Every person who engages in Business within the City shall pay a Business Tax based upon Gross Receipts at the specified category rates listed in this section.
- (b) A flat rate of \$50 will be applied to the Base Gross Receipts, as defined by section 6.04.010, regardless of which category the Business falls under. If the Business makes less than the Base Gross Receipts but more than \$1, the Business will only pay \$50 in Business Tax. Any dollar amount in excess of the Base Gross Receipt, will be calculated by the rates below.
For example, if a Business has a Gross Receipt of \$500,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$150 ($[\$500,000 - \$350,000] \times .001$) for a total of \$200 in Business Tax.
- (c) If a Business has no Gross Receipts, as defined in section 6.04.010, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations for such Business. The cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges, and other expenses.
- (d) Categories of Businesses:
 - (1) CATEGORY 1: General retail, restaurants, hotels, and tour operators and any

Business not otherwise classified (0.001 X Gross Receipts in excess of the Base Gross Receipts)

For example, if a Business has a Gross Receipt of \$500,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$150 ($[\$500,000 - \$350,000] \times .001$) for a total of \$200 in Business Tax.

(A) Any establishment or Business that conducts retail (the sale of goods to ultimate consumers, usually in small quantities), or wholesale (the sale of goods in quantity, as to retailers or jobbers, for resale), or restaurant (an establishment where meals, prepared food, and/or beverages are served to customers).

(B) "Tour operator" means a Business that provides tours in the City for Compensation.

(2) CATEGORY 2: Wholesale and Manufacturing (0.0015 X Gross Receipt in excess of the Base Gross Receipts):

For example, if a Business has a Gross Receipt of \$500,000 and is a Category 2 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$225 ($[\$500,000 - \$350,000] \times .0015$) for a total of \$275 in Business Tax.

(A) "Manufacturing" includes every person conducting or carrying on a Business consisting of manufacturing, packing, or processing any goods, wares, merchandise, or commodities at a fixed place of Business within the City or conducting or carrying on a Business of cold storage or refrigeration.

(3) CATEGORY 3: Contractors and Services (0.002 X Gross Receipt in excess of the Base Gross Receipt):

For example, if a Business has a Gross Receipt of \$500,000 and is a Category 3 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$300 ($[\$500,000 - \$350,000] \times .002$) for a total of \$350 in Business Tax.

(A) Contractors: every person, firm, or corporation conducting, managing, or carrying on the Business of contractor, subcontractor, or builder; or engaging in the construction or repair of any buildings; or engaged in any engineering, construction, operating, or advertising as such, or representing himself as such, and regularly employing help for building construction, sewer construction, plumbing construction or general construction.

(B) "Services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part,

chapter, or section of this chapter, and shall include those professions that may require governmental certification or licensure, but not be limited to the services rendered by a person engaged in the practice or profession such as hairstylist, beautician or cosmetologist, aesthetician, or art instructor.

(4) CATEGORY 4: Professionals and Rental Units (Commercial and Residential) (0.003 X Gross Receipts in excess of the Base Gross Receipt):

For example, if a Business has a Gross Receipt of \$500,000 and is a Category 4 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$450 ($[\$500,000 - \$350,000] \times .003$) for a total of \$500 in Business Tax.

(A) "Professional services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter or section of this chapter, and shall include those professions generally requiring governmental certification or a professional degree, but not be limited to the services rendered by a person engaged in the practice or profession of law, medicine, surgery, dentistry, ophthalmologist, optometry, chiropractic, osteopathy, chiropody, dental technician, laboratory technician, physical therapist, mortician, undertaker, psychologist, psychotherapy, radiologist, speech therapist, veterinary, licensed financial planner, licensed investment counselor, real estate agent, real estate broker, stock/bond or security agent or broker, civil, mechanical, electrical, industrial, or other class of engineer, surveyor, geologist, appraiser, architect, accountant, real estate management, property management, income tax preparers, bookkeepers, income tax consultants, developer, or marriage counselors.

(B) Any Business, individual, or entity that leases, rents, or otherwise provides property to another individual or entity for compensation.

ATTACHMENT D

Resolution 2: Business Taxes including a flat rate of \$50 for the first \$350,000

Title 6 - BUSINESSES, PROFESSIONS AND TRADES

Chapter 6.04 BUSINESS TAXES

Chapter 6.04 BUSINESS TAXES

Sections:

6.04.010 Definitions.

6.04.020 Revenue measure.

6.04.030 Effect on other laws.

6.04.040 Business tax payments required.

6.04.050 Evidence of doing business.

6.04.060 Constitutional apportionment.

6.04.070 Exemptions.

6.04.080 Posting and keeping tax certificates.

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~~**6.04.330 Business tax per unit**~~

~~**6.04.340 Business tax—Gross receipts**~~

~~**6.04.350 Limitations on the use and Location of cigarette vending machines**~~

~~**6.04.360 Limit on the amount of tax**~~

Article 1. General Provisions

6.04.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

~~"Average number of employees" means to determine the average number of employees for the purpose of fixing the amount of business tax due under this definition, the employer shall make the following calculations: The number of individuals who worked an average of thirty two (32) hours or more each week during the period as shown on Form DE6 of the State of California shall be totaled (subtotal 1). The number of individuals who worked an average of less than thirty two (32) hours per week during the period shall be totaled, then divided by 2 (subtotal 2). All other employees as defined in subsection (f) of this section which are not shown on Form DE6 shall be totaled (subtotal 3). Subtotals 1, 2, and 3 shall be added together in order to arrive at a grand total of employees for the period. This method shall be followed for each of the four (4) preceding quarters. The grand total of employees for each of the four (4) quarters shall be added together and the sum divided by four (4) to arrive at the average numbers of employees. The sum shall be rounded to the nearest whole number.~~

~~In the case of beginning businesses, the number shall be estimated by the applicant and the fee paid based on the estimate, but shall be adjusted to the actual number within thirty (30) days after the close of the City's fiscal year.~~

"Base Gross Receipt" means the first \$350,000 of Gross Receipt

"Business" means and includes full-time or part-time professional services and retail, wholesale, manufacturing, or other occupations, trades, or callings of any kind, whether or not carried on for profit or livelihood.

"Business tax" means the Business activity tax.

"City" means the City of Tracy, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

"Code" means the Tracy Municipal Code, as amended from time to time.

"Collector" means the Finance Director of the City or other designees charged by the Finance Director or City Manager of the City, as the case may be, with the administration of the provisions of this chapter.

"County" means the County of San Joaquin.

"Constitution" means the United States Constitution or the California Constitution, as the case may be.

"Employee" means all persons engaged in the operation or conduct of any Business, whether as a member of the owner's family, agent, manager, solicitor, and all other persons employed or working in said Business including, without limitations of the foregoing, all individuals who derive all or part of their income from commissioned sales. For purposes of computing tax based on employees, the average number of employees per year, as defined in this section, will be used.

"Fixed place of business" means premises in the City where a Business is conducted from day to day and regularly kept open for the purposes of such Business, also referred to as "regular place of business."

"Gross Receipts" means the total amount of the sale price of all sales, and/or the total amount charged or received for the performance of any act or service or employment, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act, service or employment is done as a part of or in connection with the sale of materials, goods, wares or merchandise, and when such act, service or employment occurs as a result of any activity within the City. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, except as excluded in this subsection, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever as shown by either the Federal or State income tax return required to be filed by such person.

Where the Gross Receipts, as defined above, are less than the cost of operations of the Business, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations. Such cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges and other expenses.

Excluded from "gross receipts" shall be:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold;
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

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- (d) Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;
 - (e) Amounts collected for others where the Business is acting as an agent or trustee to the extent that such amounts are paid to those whom collected;
 - (f) The amount of each single sale to a single customer in excess of fifty thousand dollars (\$50,000.00) where the gross profits derived therefrom does not exceed one percent (1%) of the sale price; and

The amount of gross receipts which has been the measure of a license tax paid to any other City. "Hearing officer" means an impartial person designated by the City Manager, as defined in Chapter 1.12 of the Tracy Municipal Code.

~~"License certificate" means the business license tax certificate and any other identifying decal or marker as may be required by the Collector.~~

~~"License certificate holder" means the person, natural or otherwise, to whom a business license tax certificate has been issued.~~

"Manufacturing" means making materials, raw or partly finished, into wares suitable for use by persons other than the manufacturer, including, but not limited to, fabrication, processing, packing, bottling, assembling, canning, compounding, and forging.

"Not-for-profit entities" means any organization that qualifies under Section 501, subsection (c) (3) of the United States Internal Revenue Code or equivalent federal statute.

"Peddler" means any person who goes from house to house or from place to place or in or along the streets of the City selling and making an immediate delivery, or offering for sale and immediate delivery, anything of value in his possession to persons other than dealers in such commodities.

"Person" means any individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, excepting: the United States of America, the State of California, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

"Solicitor" means a person engaged in soliciting, canvassing, or taking orders from house to house, or from place to place, or by telephone, or by any other means of communication for any goods, wares, or merchandise or any article to be delivered in the future, or for services to be performed in the future, or for making, manufacturing, or repairing any article whatsoever for future delivery, or for subscriptions to periodicals or tickets of admission to entertainments or memberships in any clubs.

"State" means the State of California.

"Sworn statement" means an affidavit sworn to before a person authorized to take oaths or a declaration or certification made under penalty of perjury.

"Tax Certificate" means the Business tax certificate and any other identifying decal or marker as may be required by the Collector for purposes of this Chapter 6.04.

"Tax Certificate Holder" means the Person to whom a Tax Certificate has been issued.

"Transient business" means every Business not conducted at a "fixed place of business" or at a regular place of Business, whether the person conducting such transient business is or is not a resident of the City.

"Warehousing business" means every Business conducted solely for the purpose of maintaining or renting space for the storage of any kind of property.

"Wholesale business" means every Business conducted solely for the purpose of selling goods, wares, or merchandise in wholesale lots for resale.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.020 Revenue measure.

This chapter is enacted for the sole purpose of raising revenue for municipal purposes and is not intended for regulation. The issuance of any Tax certificate shall not be construed as authorizing any Business to operate without first complying with all other applicable laws and regulations.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.030 Effect on other laws.

- (a) Persons required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of any similar tax for the privilege of doing such Business required by any other law of the City, the County or the State and shall remain subject to the regulatory provisions of those other laws.
- (b) Any Person required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of such Business Tax, notwithstanding that such Business is not in compliance with zoning, health, safety, or other regulatory provisions of the Code or other State or federal law. Compliance with the provisions of this chapter shall not constitute evidence that such Business is in compliance with any other such regulations or provisions of law.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.040 Required business tax payment.

- (a) It shall be unlawful for any person to transact and carry on any Business, trade, profession, calling, or occupation in the City without first having paid the Business Tax, as prescribed in this chapter or without complying with any and all applicable requirements of this chapter.

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- (b) This section shall not be construed to require any Person to pay a Business Tax or to comply with any other requirement of this chapter prior to doing Business within the City if such requirements conflict with applicable statutes of the United States or of the State.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.050 Evidence of doing business.

When any Person, by the use of signs, circulars, cards, telephone books, or newspapers, shall advertise, hold out, or represent that the Person is in Business in the City, or when any Person holds an active license or permit issued by a governmental agency indicating that the Person is in Business in the City, or when any Person makes a sale, takes an order, renders a commercial service, or performs any other similar act within the City, and such Person fails to deny by a sworn statement given to the Collector that the Person is not conducting a Business in the City after being requested to do so by the Collector, then such facts shall be considered prima facie evidence that the Person is conducting a Business in the City.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.060 Constitutional apportionment.

- (a) None of the Business Taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the Equal Protection and Due Process Clauses of the Constitution (b) In any case where a Business Tax is believed by a Person transacting or carrying on any Business in the City to place an undue burden upon interstate commerce or be violative of such constitutional clauses, such Person may apply to the Collector for an adjustment of the tax. Such application may be made before or at the time the tax is required to be paid or within six (6) months after the payment of the prescribed Business Tax. The applicant, by sworn statement and supporting testimony, shall show the applicant's method of Business, the gross volume or estimated gross volume of such Business, and such other information as the Collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Collector shall then conduct an investigation and, after having first obtained the written approval of the City Attorney, shall fix as the Business Tax for the applicant an amount that is reasonable and nondiscriminatory or, if the Business Tax has already been paid, shall order a refund of the amount over and above the Business Tax so fixed. Such investigation, fixing of the Business Tax, and order of refund shall be accomplished within a reasonable time upon receiving the requisite information by the City. In fixing the Business Tax, the Collector shall have the power to fix the Business Tax on any basis which will assure that the Business Tax assessed shall be uniform with that assessed on Businesses of like nature, so long as the amount assessed does not exceed the Business Tax prescribed by this chapter. If it is determined that no Business Tax is due, the applicant exempt from the Business Tax shall obtain, and the Collector shall issue, a Tax Certificate indicating such exemption from the tax.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.070 Exemptions

- (a) Nothing contained in this chapter shall be deemed or construed as applying to any person transacting, engaging in, and carrying on any Business exempt by virtue of the Constitution or applicable statutes of the United States or of the State from payment of taxes prescribed herein.
- (b) Exemptions Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, except that any such Person shall be required to obtain a tax-exempt Tax Certificate:
 - (1) Not-for-profit entities, as defined in this Code;
 - (2) Banks, including national banking associations as provided by subsection 1(a) of Section 16 of Article XIII of the State Constitution; and
 - (2) Insurance companies and associations as provided by Section 14 of Article XIII of the State Constitution provided however that insurance brokers shall not be excluded under this section.
- (c) Exemptions Not Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, and shall not be required to obtain a tax-exempt Tax Certificate:
 - (1) Any delivery by a firm lacking a fixed place of Business in the City, which delivery is occasional and incidental to a Business carried on outside the City provided, however, that four (4) or more deliveries within any twelve (12) month period shall be considered proof that any further delivery is not occasional and incidental to such Business;
 - (2) Any public utility or other organization which is wholly owned and operated by a political subdivision of the State and any public district organized under the laws of the State; and
 - (3) Any vehicle which is subject to the Motor Carriers of Property Permit Fee Act (California Revenue and Taxation Code section 7231 et. al); provided, however, this exemption shall only apply to the transportation Business.
- (d) Claims for exemption. Any Person desiring to claim an exemption from the payment of a Business Tax and to have a free tax-exempt Tax Certificate issued shall make an application therefor upon a form prescribed by the City and shall furnish such information and make such affidavits as may be required, on an annual basis. Upon the determination being made that the applicant is entitled to an exemption from the payment of the Business Tax for any reason set forth in this chapter, the City, upon the applicant complying with the provisions of this chapter or any other law of the City which may require a permit for the doing of the particular act proposed to be done, shall issue a free

tax-exempt Tax Certificate to such Person, which certificate shall show upon its face that the Business is exempt from the Business Tax.

- (e) Revocation of exemptions. The City may revoke any tax-exempt Tax Certificate granted pursuant to the provisions of this chapter upon information that the Business is not entitled to the exemption as provided therein. In such revocation, the procedure to be followed and the right of appeal shall be as provided in this chapter for the determination of a disputed tax.
- (f) Sworn statements. The City may require the filing of a sworn statement from any person claiming to be excluded by the provisions of the section, which statement shall set forth all the facts upon which the exclusion is claimed.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.080 Posting and keeping Tax Certificates – Record keeping.

- (a) Any Person carrying on Business at a fixed place of Business in the City shall keep the Tax Certificate posted in a conspicuous place on the premises where such Business is carried on.
- (b) Every Tax Certificate holder not having a fixed place of Business in the City shall keep the Tax Certificate upon his or her person, or if required by the Collector affixed in plain view upon any cart, vehicle, van, or other movable structure or device, at all times while transacting or carrying on the Business for which it is issued.
- (c) All Persons subject to the provisions of this chapter shall keep complete records of Business transactions, including sales, receipts, purchases, and other expenditures, and shall retain all such records for examination by the Collector. Such records shall be maintained for a period of at least three years. No Person required to keep records under this section shall refuse to allow authorized representatives of the Collector to examine said records at reasonable times and places.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.090 Information confidentiality.

No statement shall be conclusive as to the matters set forth in any application filed under the provisions of this chapter and neither the filing thereof, the assessment or payment of any tax, nor the issuance of any Tax Certificate shall preclude the City from collecting by appropriate action such sum as is actually due and payable. Such statement, and each of the several items therein contained, shall be subject to audit and verification by the Finance Director, who is hereby authorized to examine, audit, and inspect such books and records of any Tax Certificate Holder or applicant for a Tax Certificate as may be necessary for the judgment of the Collector to verify or ascertain the amount of Business Tax due.

- (a) It is unlawful for the Collector or any person having an administrative duty under the provisions of this chapter to make known in any manner whatever the Business affairs,

operations, or information obtained by an investigation of records and equipment of any Person required to have a Tax Certificate, or pay a Business Tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or copy of either, or any book containing any abstract particulars thereof to be seen or examined by any person. Provided that nothing in this section shall be construed to prevent:

- (1) The disclosure to, or the examination of records and equipment by, another City official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter, or collecting taxes imposed hereunder;
- (2) The disclosure of information to, or the examination of records by Federal or State officials, or the tax officials of another city or county, or city and county, if a reciprocal arrangement exists, or to a grand jury or court of law, upon subpoena;
- (3) The disclosure of information and results of the examination of records of particular taxpayers, or relating to particular payers, to a court of law in a proceeding brought to determine the existence or amount of any Business Tax liability of the particular taxpayers to the City;
- (4) The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included to the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Collector may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;
- (5) The disclosure of the names and addresses of persons to whom Business Tax receipts have been issued, and the general type or nature of their Business;
- (6) The disclosure by way of public meeting or otherwise of such information as may be necessary to the City Council in order to permit it to be fully advised as the facts when a taxpayer files a claim for refund of Business Taxes or submits an offer of compromise with regard to a claim asserted against him by the City for Business Taxes, or when acting upon any other matter;
- (7) The disclosure of general statistics regarding taxes collected or Business done in the City.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.100 Failure to file statements or corrected statements.

- (a) If any Person fails to file any required statement within the time prescribed, or if, after demand therefor made by the Collector, such Person fails to file a corrected statement, or

if any Person subject to the tax imposed by this chapter fails to submit the information required by the Collector necessary to determine the Business Tax due and payable, or if the Collector is not satisfied with the information supplied and the statement filed, the Collector may determine the amount of the Business Tax due from such Person by means of such information as he may be able to obtain.

- (b) If such a determination is made, the Collector shall give notice of the amount so assessed by serving such notice electronically, personally, or by depositing it in the United States Post Office, postage prepaid, addressed to the Person so assessed at his last known address.
- (c) Assessments so established shall be paid within fifteen (15) days after the mailing of such notice, subject to the provisions of section 6.04.180 of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.110 Amount of business tax debt to the city.

The amount of any Business Tax imposed by this chapter shall be deemed a debt to the City, and any Person carrying on any trade, calling, profession or occupation mentioned in this chapter without having a Tax Certificate from the City shall be liable to an action in the name of the City in any court of competent jurisdiction for the amount of the Business Tax by this chapter imposed on such trade, calling, profession, or occupation.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.120 Effect of convictions.

The conviction and punishment of any Person for transacting any trade, calling, profession, or occupation without a tax shall not excuse or exempt such person from the payment of any Business Tax due or unpaid at the time of such conviction, and nothing in this chapter shall prevent a criminal prosecution for any violation of the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.130 Duty of City to issue business tax certificates.

- (a) It shall be the duty of the City to prepare and issue a Tax Certificate pursuant to the provisions of this chapter for every person liable to pay a Business Tax and to state in each Tax Certificate the period of time covered thereby; the name of the person or Business to whom issued; the Business classification to which the Tax Certificate is issued; the trade, calling, profession, or occupation to which the license certificate is issued and the location or place of Business where such trade, calling, profession, or occupation is to be carried(b)
No Tax Certificate granted or issued under any provision of this chapter shall be in any manner transferred or assigned, nor shall such Tax Certificate authorize any Person, other than is therein mentioned or named, to not pay a Business Tax.
- (c) The City may make a charge of Ten (\$10.00) Dollars for each duplicate Tax Certificate issued to replace any Tax Certificate issued under the provisions of this chapter that has

been lost or destroyed. In no case shall any mistake made by the City in stating the amount of a Business Tax prevent or prejudice the collection by the City of what shall be due from any Person carrying on a trade, calling, profession, or occupation subject to Business Tax under this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.140 Business taxes payable at City offices.

All Business Taxes shall be paid in advance in lawful money of the United States to the City of Tracy, in a manner prescribed by the Collector.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.150 Separate business tax certificate required—Warehouses excepted.

A separate Tax Certificate shall be obtained for each branch establishment or location. Warehouses and distributing establishments used in connection with and incidental to a Business Taxed under the provisions of this chapter shall not be deemed to be separate places of Business or branch establishments.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.160 Business tax certificate period.

No Tax Certificate shall be issued for a period of more than twelve (12) months of the City's fiscal year beginning July 1 and ending June 30. Any application for a Tax Certificate received by the City mid-fiscal year will use a prospective estimate of how much the applicant would pay had they applied at the beginning of the Tax Certificate period.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.170 Business taxes—Payment, delinquencies, and penalties.

- (a) All Business Taxes shall be due on the first day of July and delinquent at 5:00 p.m. on the last day of July.
- (b) For failure to pay a Business Tax when due, the Collector shall add a penalty of ten (10%) percent of such Business Tax on the first day of delinquency and shall add a further penalty of ten (10%) percent of such Business Tax on the first day of every subsequent calendar month following such first day of delinquency provided the amount of such penalties to be added shall in no event exceed fifty (50%) percent of the Business Tax due. The penalties provided in this subsection shall be assessed from the date when such deficiency was required to be paid pursuant to the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.180 Application - Initial.

- (a) Upon a Person making an application for the first Business Tax Certificate for a newly established or acquired Business, such Person shall furnish to the Collector a statement, upon a form provided by the Collector; setting forth the following information:
 - (1) The exact nature or kind of Business;
 - (2) The place where such Business is to be carried on, and if the same is not to be carried on at any permanent place of Business, the places of residence of the owners of same;
 - (3) In all cases where the amount of tax to be paid is measured by gross receipts, the application shall set forth such information as may be therein required and as may be necessary to determine the amount of the tax to be paid by the applicant;
 - (4) Any further information which the Collector may require.
- (b) If the amount of the tax to be paid by the applicant is measured by gross receipts, he or she shall estimate the gross receipts for the period covered. Such estimate, if accepted by the Collector as reasonable, shall be used in determining the amount of tax to be paid by the applicant; provided, however, the amount of the tax so determined shall be tentative only, and such person shall, within 60 days after the expiration of the period covered, furnish the Collector with a statement, upon a form prescribed by the Collector, showing the applicant's actual gross receipts during the period covered, and the tax for such period shall be finally ascertained and paid in the manner provided by this chapter for the ascertaining and paying of such taxes, after deducting from the payment found to be due the amounts initially paid.
- (c) In all cases, the applicant shall, upon filing his or her application, pay no less than the prescribed minimum tax in advance, without being prorated, to cover the remaining portion of the current reporting period.
- (d) The Collector shall not issue to any such person another Business Tax Certificate for the same or any other Business until such Person shall have furnished to him or her a statement and paid the tax as herein required.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.190 Application - Renewal.

In all cases, the applicant for the renewal of a Business Tax Certificate shall submit to the Collector for his or her guidance in ascertaining the amount of the tax to be paid by the applicant, a statement, upon a form prescribed by the Collector, setting forth such information concerning the applicant's Business during the preceding year as may be required by the Collector to enable him or her to ascertain the amount of the tax to be paid by said applicant pursuant to the provisions of this chapter. ~~(Ord. 1044 § 1 (part), 2002)~~

6.04.200 Extensions of filing dates—Interest charges.

The Collector shall have the power, for good cause, to extend the time for filing any required sworn statement for a period not exceeding sixty (60) days and in such case to waive any penalty that would have otherwise accrued, except that twelve (12%) percent simple interest shall be added to any tax determined to be payable.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.210 Refunds.

No refund of an overpayment of a Business Tax imposed by this chapter shall be allowed in whole or in part unless a claim for a refund is filed with the Collector within a period of one (1) years after the last day of the calendar month following the period for which the overpayment was made, and all such claims for refunds shall be filed with the Collector on forms the Collector furnishes in the manner prescribed by the Collector. Upon the filing of such a claim and when the Collector determines, in a reasonable time, that an overpayment has been made, the Collector may refund the amount overpaid.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.220 Determinations of business classifications an administrative function.

The final determination of which Business or class of Business a Tax Certificate Holder or applicant for a Tax Certificate is engaged in, or about to engage in, shall be an administrative function of the City.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.230 Applications for changes of business classifications.

- (a) In any case, where a Tax Certificate Holder or an applicant for a Tax Certificate believes that his or her Business is not assigned to the proper classification under this chapter because of circumstances peculiar to it, as distinguished from other Businesses of the same kind, he or she may apply to the Collector for reclassification. Such application shall contain such information as the Collector may deem necessary and require in order to determine whether the applicant's individual Business is properly classified. The Collector shall then conduct an investigation following which he or she shall assign the applicant's individual Business to the classification shown to be proper on the basis of such investigation. The proper classification is that classification which, in the opinion of the Collector, most nearly fits the applicant's Business. The reclassification shall not be retroactive but shall apply at the time of the next regularly ensuing calculation of the applicant's tax. No Business shall be classified more than once a year.
- (b) The Collector shall notify the applicant of the action taken on the application for reclassification. Such notice shall be given by serving it personally or by depositing it in the United States Post Office postage prepaid, addressed to the applicant at his or her last known address. Such applicant may, within 10 working days after the mailing or serving of

such notices, make a written request to the Collector for a appeal hearing on the application's reclassification. If such a request is made within the time prescribed, the Collector shall cause the matter to be set for hearing before the City Council within 15 days. The Collector shall give the applicant at least 10 days' notice of the time and place of the hearing in the manner prescribed under section 1.12.020 for serving notice of the action taken on the application for reclassification. The City Council shall consider all evidence adduced and shall adopt a resolution reflecting its decision. The decision of the City Council shall be final.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.240 Appeals on decisions of business classifications.

Any applicant or Tax Certificate Holder aggrieved by the Business classification decision of the City shall have the right of appeal to an impartial Hearing Officer as outlined by section 1.12.030 of the Code. Such appeal shall be taken by filing with the City Clerk, within fifteen (15) days after the notice of the decision of the City, a written statement setting forth the grounds for the appeal. The City Clerk shall set a time and place for a hearing on such appeal within thirty (30) days after the receipt of the appeal. Notwithstanding chapter 1.12 of the Code, the decisions and orders of the Hearing Officer shall be final and conclusive.

~~(Ord. 1111 § 4 Exh. A (part), 2007; Ord. 1044 § 1 (part), 2002)~~

6.04.250 Rules and regulations.

The City Manager may promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary or desirable to aid in the enforcement of the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.260 Referrals to other agencies—Prepayment of taxes.

- (a) Referrals to other agencies. The Collector may refer to any governmental agency any statement and all other information submitted by persons subject to the provisions of this chapter in connection with the conduct of a Business regulated or supervised or otherwise the concern of any such agency, including agencies concerned with health regulations, zoning conformance, fire safety, police considerations, or any other safeguard of the public interest. (b) Prepayment of taxes. The Collector may advise any person filing a statement in connection with the payment of a Business Tax for a new or other Business not actually in operation that such person may desire to defer the payment of the Business Tax until the person has obtained whatever approval may be required in order to transact and carry on the Business until such Business is actually in operation. If any person does, however, pay the Business Tax in advance of the commencement of the operation of the Business, but does not operate the Business because City or other governmental agency did not grant an approval which is required by regulation or law in order for such Business to be transacted and carried on, then the Business Tax shall be refunded in full, after the

person has informed Collector in a timely manner, to the person having paid such tax minus the application fee as set by resolution of the City Council and revised from time to time.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.270 Enforcement.

- (a) It shall be the duty of the Collector to enforce each and all of the provisions of this chapter, and the various City departments shall render such assistance in the enforcement as may from time to time be required by the Collector, City Manager, or City Council.
- (b) The Collector, in the exercise of the duties imposed upon the Collector shall examine, or cause to be examined, all places of Business in the City to ascertain whether the provisions of this chapter have been complied with.
- (c) The Collector, and each designee, and any police officer or duly authorized inspector, shall have the power and authority to enter free of charge at any reasonable time any place of Business or to question any person, which Business or person is, or there is reasonable cause to believe such Business or person may be, subject to the provision of this chapter, and demand an exhibition of proof of Business Tax payment.
- (d) The Collector's designees who have satisfactorily completed a certified course in "Powers of Arrest" may thereafter exercise the powers of arrest as specified in Section 836.5 of the California Penal Code on any person who has committed a misdemeanor or infraction in their presence which is a violation of the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.280 Remedies cumulative.

All remedies prescribed in this chapter shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.290 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have adopted this chapter, and each section, subsection, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions be declared invalid or unconstitutional.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.300 Violations—Penalties.

Any person violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring, or attempting to procure, the Business Tax certificate provided for in this chapter shall be deemed guilty of an infraction.

~~(Ord. 1044 § 1 (part), 2002)~~

Article 2. Taxes

~~6.04.310 Business tax per average number of employees.~~

~~Each person transacting and carrying on a business not specifically classified by other sections of this chapter shall pay an annual business tax of One hundred and no/100ths (\$100.00) Dollars which covers one owner, plus the sum of Twenty and no/100ths (\$20.00) Dollars for each additional employee or owner. Said business tax shall be determined annually based upon the average number of employees of the business in the City's preceding year.~~

~~Business taxes under this section for new businesses commenced on or after the first day of October shall be prorated as follows:~~

Date of commencement of business	Pro-rated tax
October 1 through December 31	$\frac{3}{4}$ of annual business tax
January 1 through March 31	$\frac{1}{2}$ of annual business tax
April 1 through June 30	$\frac{1}{4}$ of annual business tax

~~(Ord. 1044 § 1 (part), 2002)~~

~~6.04.320 Business tax—Flat fee.~~

~~Every person who carries on the following business activities within the City shall pay a business tax based upon the rates and in the classifications set forth below:~~

- ~~Advertising;~~
- ~~Amusements;~~
- ~~Auctioneers;~~
- ~~Card tables;~~
- ~~Contractors;~~
- ~~Dances;~~
- ~~Fire sales, bankruptcy, close-out;~~
- ~~Outside business;~~
- ~~Palmistry;~~
- ~~Peddlers;~~

Solicitors;
Street musicians, Entertainers;
Christmas tree lots, Pumpkin patches;

~~(a) Advertising. For accomplishing advertising for others by the following means, the business taxes shall be:~~

~~(1) By handbills, dodgers, stickers, advertising samples, circulars, booklets, or similar devices, Eight and no/100ths (\$8.00) Dollars per day or Twenty Eight and no/100ths (\$28.00) Dollars per quarter for each person engaged in the distribution or managing the distribution thereof (see sections 4.12.1140 through 4.12.1170 of this code);~~

~~(2) By outdoor billboards, Eighty and no/100ths (\$80.00) Dollars per year, or fraction thereof, for each billboard;~~

~~(3) By means of stereopticon, biograph, searchlight, moving pictures, or similar devices, Twenty Five and no/100ths (\$25.00) Dollars per month for each machine or device. The provisions of this subsection shall not apply to licensed motion picture theaters; and~~

~~(4) By amplified sound or display advertisements over ten (10') feet in any dimension attached to a ground or airborne vehicle, Fifteen and no/100ths (\$15.00) Dollars per month per vehicle.~~

~~(b) Amusements.~~

~~(1) The business taxes for amusement rides and similar concessions shall be Seven and no/100ths (\$7.00) Dollars per day or Thirty and no/100ths (\$30.00) Dollars per quarter, or fraction thereof, for each such ride or concession.~~

~~(2) The business taxes for carnivals, circuses or tent shows shall be Four Hundred and no/100ths (\$400.00) Dollars for the first day and Two Hundred Fifty and no/100ths (\$250.00) Dollars for each additional day. When a carnival or circus tax is paid, no additional license shall be required for the concessions, shows, or rides within the carnival.~~

~~(c) Auctioneers. (See article 7 of chapter 4.12 of this Code).~~

~~(d) Card tables and card rooms. (See sections 4.04.030 and 4.04.040 of this Code).~~

~~(e) Contractors. The business taxes for general contractors, subcontractors, and specialty contractors not having a fixed place of business within the City shall be One Hundred Twenty and no/100ths (\$120.00) Dollars per year or Forty and no/100ths (\$40.00) Dollars per quarter, or fractional part thereof.~~

~~(f) Dances. (See article 2 of chapter 4.04 of this Code).~~

~~(g) Outside businesses. Every person not having a fixed place of business within the City who engages in business within the City and is not subject to the other~~

provisions of this chapter shall have the option to pay a business tax at the same rate prescribed in this chapter for persons engaged in the same type of business and having a fixed place of business within the City, or pay a flat rate of One hundred (\$100.00) Dollars.

- ~~(h) Palmistry. (See section 4.12.180 of this Code).~~
- ~~(i) Peddlers and candy and lunch wagons, stands, and vehicles. The business taxes for each peddler and each candy and lunch wagon, stand, kiosk or vehicle shall be Twenty Five and no/100ths (\$25.00) Dollars per quarter, or fractional part thereof.~~
- ~~(j) Solicitors.
 - ~~(1) Every person conducting the business of soliciting within the City shall pay a business tax of One Hundred and no/100ths (\$100.00) Dollars quarterly or Ten and no/100ths (\$10.00) Dollars per day with a three day minimum. No credit shall be received for any daily tax paid in the event a quarterly License certificate is thereafter obtained.~~
 - ~~(2) The payment of such license tax shall not relieve any solicitor from obtaining a permit, as provided in section 4.12.200 and following.~~
 - ~~(3) Where a payment or deposit is demanded in advance of the final delivery, a bond shall be furnished to the City by each such person engaged in the business of canvassing, soliciting, or taking orders for goods, wares, merchandise, or any article or for services to be performed.

Such bond shall be in the penal sum of Five Hundred and no/100ths (\$500.00) Dollars executed by a surety company acceptable to the City, or in lieu thereof, a cash bond of equal amount, conditioned upon the making of the final delivery of the goods ordered or services to be performed, in accordance with the terms in such order, or, failing therein, that the advance payment on such order be refunded within sixty (60) days after the contract delivery date.~~~~
- ~~(k) Street musicians/Entertainers. The business taxes for street musicians or entertainers shall be Fifteen and no/100ths (\$15.00) Dollars per day per operator or employee.~~
- ~~(l) Christmas tree lots and pumpkin patches. Christmas tree lots and pumpkin patches shall pay a business tax of One Hundred and no/100ths (\$100.00) Dollars per season, except where business is conducted in connection with another regularly established place of business for which a License certificate has been issued.~~

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.330 Business tax per unit.

Every person transacting and carrying on the businesses or activities herein enumerated shall pay a business tax as follows:

~~(a) Rental property.~~

- ~~(1) Any person owning and conducting, operating, renting, or leasing a rooming house, boardinghouse, apartment house, lodging house, trailer park, mobile home court, three or more residential units, or commercial building, with the exception of hotels and motels, shall pay annually the following business tax: Sixty and no/100ths (\$60.00) Dollars for the first six (6) units plus Five and no/100ths (\$5.00) Dollars for each additional unit over six (6). The provisions of this section shall not apply to subleases. A unit is defined as an individual house, a living space in a multiple dwelling, or a defined space within a commercial building.~~
- ~~(2) The provisions of this section shall apply to persons engaged in renting, or leasing real property to governmental entities.~~
- ~~(3) The taxes provided for in this section shall be in addition to any business tax which may be required to be paid by real estate brokers, agents, or other persons engaged in business and taxed pursuant to other provisions of this chapter.~~

~~Business taxes under this section for new businesses commenced on or after the first day of October shall be pro-rated as follows:~~

Date of Commencement of Business	Pro-rated Tax
October 1 through December 31	¾ of annual business tax
January 1 through March 31	½ of annual business tax
April 1 through June 30	¼ of annual business tax

- ~~(b) Delivery vehicles. Every person who collects, gathers, picks up or loads goods, wares or merchandise within the City, or who delivers good, wares or merchandise within the City from or to a point inside or outside the City by means of a motor vehicle four (4) or more times within any twelve (12) month period, is assessed a business tax in the sum of Ninety and no/100ths (\$90.00) Dollars for the first vehicle plus Twenty Five and no/100ths (\$25.00) Dollars for each additional vehicle.~~

~~(1) A vehicle delivering to or for a person who is a License certificate holder with a fixed place of business within the City shall be exempt from the provisions of this section when such vehicle is the property of that person.~~

~~{Ord. 1044 § 1 (part), 2002}~~

~~6.04.340 Business tax—Gross receipts.~~

~~Any person engaged in the business of selling merchandise, services, or information by means of coin-operated devices in the City shall pay a business tax per fiscal year, or fractional part thereof, for each dollars of gross receipts derived there from as follows:~~

ANNUAL GROSS SALES OR RECEIPTS	ANNUAL BUSINESS TAX
Under \$10,000.00	\$25.00
\$10,001.00 to \$30,000.00	35.00
\$30,001.00 to \$50,000.00	55.00
\$50,001.00 and over	75.00

~~In addition, upon renewals such person shall furnish information on the number of such devices used in such business. In the event any such device shall be located in the City without having been so registered, such device may be impounded by the City until claimed and registered and a license certificate is obtained by such claimant. Applications for the license certificates required by this chapter shall be made to the Collector on forms the Collector provides, shall be signed by the applicant, and shall contain the following information in addition to whatever additional information the Collector deems necessary:~~

- ~~(a) The name, occupation, and address of the applicant;~~
- ~~(b) The location of the premises where the electrical musical device, vending machine, or weighing machine is to be placed, maintained to be operated, or operated, and, if such devices are to be placed, maintained to be operated, or operated in connection with any other business or calling, the character of such business or calling and the nature of the owner of such business or calling;~~
- ~~(c) A complete description of the type of device, showing the name of the machine and any identifying number or other identifying features and the manner in which it is to be placed, maintained, or operated;~~
- ~~(d) The nature of the applicant's interest in or title to the device for which the license certificate is sought, and, if the applicant does not own the device, the name of the owner of such device; and~~
- ~~(e) If the application is for a license certificate to operate and/or maintain a vending machine for cigarettes or other tobacco products, a complete statement as to the~~

manner in which the provisions of section 6.04.350 of this Article shall be complied with.

(Ord. 1044 § 1 (part), 2002)

6.04.350 Limitations on the use and locations of cigarette vending machines.

It is unlawful to own, operate, or maintain a vending machine for cigarettes or other tobacco products within the City unless:

- (a) ~~The machine is located within a building; and~~
- (b) ~~For all hours during which the public has access to such building where the machine is located, there is an adult clerk or attendant on duty who will be responsible for supervising the operation of such machine.~~

(Ord. 1044 § 1 (part), 2002)

6.04.360 Limit on amount of tax.

~~Notwithstanding any provisions of this Article, the maximum business tax assessable to each business subject to a business tax under this Article shall be Two Thousand and no/100ths (\$2,000.00) Dollars per year.~~

(Ord. 1044 § 1 (part), 2002)

6.04.310 Determination of tax due based on gross receipts plus annual registration tax.

- (a) Every person who engages in Business within the City shall pay a Business Tax based upon Gross Receipts at the specified category rates listed in this section.
- (b) A flat rate of \$50 will be applied to the Base Gross Receipts, as defined by section 6.04.010, regardless of which category the Business falls under. If the Business makes less than the Base Gross Receipts but more than \$1, the Business will only pay \$50 in Business Tax. Any dollar amount in excess of the Base Gross Receipt, will be calculated by the rates below.
For example, if a Business has a Gross Receipt of \$500,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$150 ([\$500,000-\$350,000] x .001) for a total of \$200 in Business Tax.
- (c) If a Business has no Gross Receipts, as defined in section 6.04.010, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations for such Business. The cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges, and other expenses.

(d) Categories of Businesses:

- (1) CATEGORY 1: General retail, restaurants, hotels, and tour operators and any Business not otherwise classified (0.001 X Gross Receipts in excess of the Base Gross Receipts)

For example, if a Business has a Gross Receipt of \$500,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$150 ([$\$500,000 - \$350,000$] x .001) for a total of \$200 in Business Tax.

(A) Any establishment or Business that conducts retail (the sale of goods to ultimate consumers, usually in small quantities), or wholesale (the sale of goods in quantity, as to retailers or jobbers, for resale), or restaurant (an establishment where meals, prepared food, and/or beverages are served to customers).

(B) "Tour operator" means a Business that provides tours in the City for Compensation.

- (2) CATEGORY 2: Wholesale and Manufacturing (0.0015 X Gross Receipt in excess of the Base Gross Receipts):

For example, if a Business has a Gross Receipt of \$500,000 and is a Category 2 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$225 ([$\$500,000 - \$350,000$] x .0015) for a total of \$275 in Business Tax.

(A) "Manufacturing" includes every person conducting or carrying on a Business consisting of manufacturing, packing, or processing any goods, wares, merchandise, or commodities at a fixed place of Business within the City or conducting or carrying on a Business of cold storage or refrigeration.

- (3) CATEGORY 3: Contractors and Services (0.002 X Gross Receipt in excess of the Base Gross Receipt):

For example, if a Business has a Gross Receipt of \$500,000 and is a Category 3 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$300 ([$\$500,000 - \$350,000$] x .002) for a total of \$350 in Business Tax.

(A) Contractors: every person, firm, or corporation conducting, managing, or carrying on the Business of contractor, subcontractor, or builder; or engaging in the construction or repair of any buildings; or engaged in any engineering, construction, operating, or advertising as such, or representing himself as such, and regularly employing help for building construction, sewer construction, plumbing construction or general construction.

(B) "Services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the

Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter, or section of this chapter, and shall include those professions that may require governmental certification or licensure, but not be limited to the services rendered by a person engaged in the practice or profession such as hairstylist, beautician or cosmetologist, aesthetician, or art instructor.

(4) CATEGORY 4: Professionals and Rental Units (Commercial and Residential) (0.003 X Gross Receipts in excess of the Base Gross Receipt):

For example, if a Business has a Gross Receipt of \$500,000 and is a Category 4 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$450 ($[\$500,000 - \$350,000] \times .003$) for a total of \$500 in Business Tax.

(A) “Professional services” means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter or section of this chapter, and shall include those professions generally requiring governmental certification or a professional degree, but not be limited to the services rendered by a person engaged in the practice or profession of law, medicine, surgery, dentistry, ophthalmologist, optometry, chiropractic, osteopathy, chiropody, dental technician, laboratory technician, physical therapist, mortician, undertaker, psychologist, psychotherapy, radiologist, speech therapist, veterinary, licensed financial planner, licensed investment counselor, real estate agent, real estate broker, stock/bond or security agent or broker, civil, mechanical, electrical, industrial, or other class of engineer, surveyor, geologist, appraiser, architect, accountant, real estate management, property management, income tax preparers, bookkeepers, income tax consultants, developer, or marriage counselors.

(B) Any Business, individual, or entity that leases, rents, or otherwise provides property to another individual or entity for compensation.

ATTACHMENT E

Resolution 3: Business Taxes including a flat rate of \$50 for the first \$500,000

Title 6 - BUSINESSES, PROFESSIONS AND TRADES

Chapter 6.04 BUSINESS TAXES

Chapter 6.04 BUSINESS TAXES

Sections:

6.04.010 Definitions.

6.04.020 Revenue measure.

6.04.030 Effect on other laws.

6.04.040 Business tax payments required.

6.04.050 Evidence of doing business.

6.04.060 Constitutional apportionment.

6.04.070 Exemptions.

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Article 1. General Provisions

6.04.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

“Base Gross Receipt” means the first \$500,000 of Gross Receipt

"Business" means and includes full-time or part-time professional services and retail, wholesale, manufacturing, or other occupations, trades, or callings of any kind, whether or not carried on for profit or livelihood.

"Business tax" means the Business activity tax.

"City" means the City of Tracy, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

“Code” means the Tracy Municipal Code, as amended from time to time.

"Collector" means the Finance Director of the City or other designees charged by the Finance Director or City Manager of the City, as the case may be, with the administration of the provisions of this chapter.

“County” means the County of San Joaquin.

“Constitution” means the United States Constitution or the California Constitution, as the case may be.

"Employee" means all persons engaged in the operation or conduct of any Business, whether as a member of the owner's family, agent, manager, solicitor, and all other persons employed or working in said Business including, without limitations of the foregoing, all individuals who derive all or part of their income from commissioned sales. For purposes of computing tax based on employees, the average number of employees per year, as defined in this section, will be used.

"Fixed place of business" means premises in the City where a Business is conducted from day to day and regularly kept open for the purposes of such Business, also referred to as "regular place of business."

“Gross Receipts” means the total amount of the sale price of all sales, and/or the total amount charged or received for the performance of any act or service or employment, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act, service or employment is done as a part of or in connection with the sale of materials, goods, wares or merchandise, and when such act, service or employment occurs as a result of any activity within the City. Included in “gross receipts” shall be all receipts, cash, credits and property of any kind or nature, except as excluded in this subsection, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever as shown by either the Federal or State income tax return required to be filed by such person.

Where the Gross Receipts, as defined above, are less than the cost of operations of the Business, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations. Such cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges and other expenses.

Excluded from “gross receipts” shall be:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold;
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (d) Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;
- (e) Amounts collected for others where the Business is acting as an agent or trustee to the extent that such amounts are paid to those whom collected;
- (f) The amount of each single sale to a single customer in excess of fifty thousand dollars (\$50,000.00) where the gross profits derived therefrom does not exceed one percent (1%) of the sale price; and

The amount of gross receipts which has been the measure of a license tax paid to any other City. “Hearing officer” means an impartial person designated by the City Manager, as defined in Chapter 1.12 of the Tracy Municipal Code.

"Manufacturing" means making materials, raw or partly finished, into wares suitable for use by persons other than the manufacturer, including, but not limited to, fabrication, processing, packing, bottling, assembling, canning, compounding, and forging.

"Not-for-profit entities" means any organization that qualifies under Section 501, subsection (c) (3) of the United States Internal Revenue Code or equivalent federal statute.

"Peddler" means any person who goes from house to house or from place to place or in or along the streets of the City selling and making an immediate delivery, or offering for sale and immediate delivery, anything of value in his possession to persons other than dealers in such commodities.

"Person" means any individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, excepting: the United States of America, the State of California, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

"Solicitor" means a person engaged in soliciting, canvassing, or taking orders from house to house, or from place to place, or by telephone, or by any other means of communication for any goods, wares, or merchandise or any article to be delivered in the future, or for services to be performed in the future, or for making, manufacturing, or repairing any article whatsoever for future delivery, or for subscriptions to periodicals or tickets of admission to entertainments or memberships in any clubs.

"State" means the State of California.

"Sworn statement" means an affidavit sworn to before a person authorized to take oaths or a declaration or certification made under penalty of perjury.

"Tax Certificate" means the Business tax certificate and any other identifying decal or marker as may be required by the Collector for purposes of this Chapter 6.04.

"Tax Certificate Holder" means the Person to whom a Tax Certificate has been issued.

"Transient business" means every Business not conducted at a "fixed place of business" or at a regular place of Business, whether the person conducting such transient business is or is not a resident of the City.

"Warehousing business" means every Business conducted solely for the purpose of maintaining or renting space for the storage of any kind of property.

"Wholesale business" means every Business conducted solely for the purpose of selling goods, wares, or merchandise in wholesale lots for resale.

6.04.020 Revenue measure.

This chapter is enacted for the sole purpose of raising revenue for municipal purposes and is not intended for regulation. The issuance of any Tax certificate shall not be construed as authorizing any Business to operate without first complying with all other applicable laws and regulations.

6.04.030 Effect on other laws.

- (a) Persons required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of any similar tax for the privilege of doing such Business required by any other law of the City, the County or the State and shall remain subject to the regulatory provisions of those other laws.

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- (b) Any Person required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of such Business Tax, notwithstanding that such Business is not in compliance with zoning, health, safety, or other regulatory provisions of the Code or other State or federal law. Compliance with the provisions of this chapter shall not constitute evidence that such Business is in compliance with any other such regulations or provisions of law.

6.04.040 Required business tax payment.

- (a) It shall be unlawful for any person to transact and carry on any Business, trade, profession, calling, or occupation in the City without first having paid the Business Tax, as prescribed in this chapter or without complying with any and all applicable requirements of this chapter.
- (b) This section shall not be construed to require any Person to pay a Business Tax or to comply with any other requirement of this chapter prior to doing Business within the City if such requirements conflict with applicable statutes of the United States or of the State.

6.04.050 Evidence of doing business.

When any Person, by the use of signs, circulars, cards, telephone books, or newspapers, shall advertise, hold out, or represent that the Person is in Business in the City, or when any Person holds an active license or permit issued by a governmental agency indicating that the Person is in Business in the City, or when any Person makes a sale, takes an order, renders a commercial service, or performs any other similar act within the City, and such Person fails to deny by a sworn statement given to the Collector that the Person is not conducting a Business in the City after being requested to do so by the Collector, then such facts shall be considered prima facie evidence that the Person is conducting a Business in the City.

6.04.060 Constitutional apportionment.

- (a) None of the Business Taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the Equal Protection and Due Process Clauses of the Constitution
- (b) In any case where a Business Tax is believed by a Person transacting or carrying on any Business in the City to place an undue burden upon interstate commerce or be violative of such constitutional clauses, such Person may apply to the Collector for an adjustment of the tax. Such application may be made before or at the time the tax is required to be paid or within six (6) months after the payment of the prescribed Business Tax. The applicant, by sworn statement and supporting testimony, shall show the applicant's method of Business, the gross volume or estimated gross volume of such Business, and such other information as the Collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Collector shall then conduct an investigation and, after having first obtained the written approval of the City Attorney, shall fix as the Business Tax for the applicant an amount that is reasonable and nondiscriminatory or, if the Business Tax has already been paid, shall order a refund of the amount over and above the Business Tax so fixed. Such investigation, fixing of the Business Tax, and order

of refund shall be accomplished within a reasonable time upon receiving the requisite information by the City. In fixing the Business Tax, the Collector shall have the power to fix the Business Tax on any basis which will assure that the Business Tax assessed shall be uniform with that assessed on Businesses of like nature, so long as the amount assessed does not exceed the Business Tax prescribed by this chapter. If it is determined that no Business Tax is due, the applicant exempt from the Business Tax shall obtain, and the Collector shall issue, a Tax Certificate indicating such exemption from the tax.

6.04.070 Exemptions

- (a) Nothing contained in this chapter shall be deemed or construed as applying to any person transacting, engaging in, and carrying on any Business exempt by virtue of the Constitution or applicable statutes of the United States or of the State from payment of taxes prescribed herein.
- (b) Exemptions Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, except that any such Person shall be required to obtain a tax-exempt Tax Certificate:
 - (1) Not-for-profit entities, as defined in this Code;
 - (2) Banks, including national banking associations as provided by subsection 1(a) of Section 16 of Article XIII of the State Constitution; and
 - (2) Insurance companies and associations as provided by Section 14 of Article XIII of the State Constitution provided however that insurance brokers shall not be excluded under this section.
- (c) Exemptions Not Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, and shall not be required to obtain a tax-exempt Tax Certificate:
 - (1) Any delivery by a firm lacking a fixed place of Business in the City, which delivery is occasional and incidental to a Business carried on outside the City provided, however, that four (4) or more deliveries within any twelve (12) month period shall be considered proof that any further delivery is not occasional and incidental to such Business;
 - (2) Any public utility or other organization which is wholly owned and operated by a political subdivision of the State and any public district organized under the laws of the State; and
 - (3) Any vehicle which is subject to the Motor Carriers of Property Permit Fee Act (California Revenue and Taxation Code section 7231 et. al); provided, however, this exemption shall only apply to the transportation Business.
- (d) Claims for exemption. Any Person desiring to claim an exemption from the payment of a Business Tax and to have a free tax-exempt Tax Certificate issued shall make an application therefor upon a form prescribed by the City and shall furnish such information and make such affidavits as may be required, on an annual basis. Upon the determination

being made that the applicant is entitled to an exemption from the payment of the Business Tax for any reason set forth in this chapter, the City, upon the applicant complying with the provisions of this chapter or any other law of the City which may require a permit for the doing of the particular act proposed to be done, shall issue a free tax-exempt Tax Certificate to such Person, which certificate shall show upon its face that the Business is exempt from the Business Tax.

- (e) Revocation of exemptions. The City may revoke any tax-exempt Tax Certificate granted pursuant to the provisions of this chapter upon information that the Business is not entitled to the exemption as provided therein. In such revocation, the procedure to be followed and the right of appeal shall be as provided in this chapter for the determination of a disputed tax.
- (f) Sworn statements. The City may require the filing of a sworn statement from any person claiming to be excluded by the provisions of the section, which statement shall set forth all the facts upon which the exclusion is claimed.

6.04.080 Posting and keeping Tax Certificates – Record keeping.

- (a) Any Person carrying on Business at a fixed place of Business in the City shall keep the Tax Certificate posted in a conspicuous place on the premises where such Business is carried on.
- (b) Every Tax Certificate holder not having a fixed place of Business in the City shall keep the Tax Certificate upon his or her person, or if required by the Collector affixed in plain view upon any cart, vehicle, van, or other movable structure or device, at all times while transacting or carrying on the Business for which it is issued.
- (c) All Persons subject to the provisions of this chapter shall keep complete records of Business transactions, including sales, receipts, purchases, and other expenditures, and shall retain all such records for examination by the Collector. Such records shall be maintained for a period of at least three years. No Person required to keep records under this section shall refuse to allow authorized representatives of the Collector to examine said records at reasonable times and places.

6.04.090 Information confidentiality.

No statement shall be conclusive as to the matters set forth in any application filed under the provisions of this chapter and neither the filing thereof, the assessment or payment of any tax, nor the issuance of any Tax Certificate shall preclude the City from collecting by appropriate action such sum as is actually due and payable. Such statement, and each of the several items therein contained, shall be subject to audit and verification by the Finance Director, who is hereby authorized to examine, audit, and inspect such books and records of any Tax Certificate Holder or applicant for a Tax Certificate as may be necessary for the judgment of the Collector to verify or ascertain the amount of Business Tax due.

- (a) It is unlawful for the Collector or any person having an administrative duty under the provisions of this chapter to make known in any manner whatever the Business affairs,

operations, or information obtained by an investigation of records and equipment of any Person required to have a Tax Certificate, or pay a Business Tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or copy of either, or any book containing any abstract particulars thereof to be seen or examined by any person. Provided that nothing in this section shall be construed to prevent:

- (1) The disclosure to, or the examination of records and equipment by, another City official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter, or collecting taxes imposed hereunder;
- (2) The disclosure of information to, or the examination of records by Federal or State officials, or the tax officials of another city or county, or city and county, if a reciprocal arrangement exists, or to a grand jury or court of law, upon subpoena;
- (3) The disclosure of information and results of the examination of records of particular taxpayers, or relating to particular payers, to a court of law in a proceeding brought to determine the existence or amount of any Business Tax liability of the particular taxpayers to the City;
- (4) The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included to the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Collector may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;
- (5) The disclosure of the names and addresses of persons to whom Business Tax receipts have been issued, and the general type or nature of their Business;
- (6) The disclosure by way of public meeting or otherwise of such information as may be necessary to the City Council in order to permit it to be fully advised as the facts when a taxpayer files a claim for refund of Business Taxes or submits an offer of compromise with regard to a claim asserted against him by the City for Business Taxes, or when acting upon any other matter;
- (7) The disclosure of general statistics regarding taxes collected or Business done in the City.

6.04.100 Failure to file statements or corrected statements.

- (a) If any Person fails to file any required statement within the time prescribed, or if, after demand therefor made by the Collector, such Person fails to file a corrected statement, or if any Person subject to the tax imposed by this chapter fails to submit the information required by the Collector necessary to determine the Business Tax due and payable, or if

the Collector is not satisfied with the information supplied and the statement filed, the Collector may determine the amount of the Business Tax due from such Person by means of such information as he may be able to obtain.

- (b) If such a determination is made, the Collector shall give notice of the amount so assessed by serving such notice electronically, personally, or by depositing it in the United States Post Office, postage prepaid, addressed to the Person so assessed at his last known address.
- (c) Assessments so established shall be paid within fifteen (15) days after the mailing of such notice, subject to the provisions of section 6.04.180 of this chapter.

6.04.110 Amount of business tax debt to the city.

The amount of any Business Tax imposed by this chapter shall be deemed a debt to the City, and any Person carrying on any trade, calling, profession or occupation mentioned in this chapter without having a Tax Certificate from the City shall be liable to an action in the name of the City in any court of competent jurisdiction for the amount of the Business Tax by this chapter imposed on such trade, calling, profession, or occupation.

6.04.120 Effect of convictions.

The conviction and punishment of any Person for transacting any trade, calling, profession, or occupation without a tax shall not excuse or exempt such person from the payment of any Business Tax due or unpaid at the time of such conviction, and nothing in this chapter shall prevent a criminal prosecution for any violation of the provisions of this chapter.

6.04.130 Duty of City to issue business tax certificates.

- (a) It shall be the duty of the City to prepare and issue a Tax Certificate pursuant to the provisions of this chapter for every person liable to pay a Business Tax and to state in each Tax Certificate the period of time covered thereby; the name of the person or Business to whom issued; the Business classification to which the Tax Certificate is issued; the trade, calling, profession, or occupation to which the license certificate is issued and the location or place of Business where such trade, calling, profession, or occupation is to be carried(b)
 - No Tax Certificate granted or issued under any provision of this chapter shall be in any manner transferred or assigned, nor shall such Tax Certificate authorize any Person, other than is therein mentioned or named, to not pay a Business Tax.
- (c) The City may make a charge of Ten (\$10.00) Dollars for each duplicate Tax Certificate issued to replace any Tax Certificate issued under the provisions of this chapter that has been lost or destroyed. In no case shall any mistake made by the City in stating the amount of a Business Tax prevent or prejudice the collection by the City of what shall be due from any Person carrying on a trade, calling, profession, or occupation subject to Business Tax under this chapter.

6.04.140 Business taxes payable at City offices.

All Business Taxes shall be paid in advance in lawful money of the United States to the City of Tracy, in a manner prescribed by the Collector.

6.04.150 Separate business tax certificate required—Warehouses excepted.

A separate Tax Certificate shall be obtained for each branch establishment or location. Warehouses and distributing establishments used in connection with and incidental to a Business Taxed under the provisions of this chapter shall not be deemed to be separate places of Business or branch establishments.

6.04.160 Business tax certificate period.

No Tax Certificate shall be issued for a period of more than twelve (12) months of the City's fiscal year beginning July 1 and ending June 30. Any application for a Tax Certificate received by the City mid-fiscal year will use a prospective estimate of how much the applicant would pay had they applied at the beginning of the Tax Certificate period.

6.04.170 Business taxes—Payment, delinquencies, and penalties.

- (a) All Business Taxes shall be due on the first day of July and delinquent at 5:00 p.m. on the last day of July.
- (b) For failure to pay a Business Tax when due, the Collector shall add a penalty of ten (10%) percent of such Business Tax on the first day of delinquency and shall add a further penalty of ten (10%) percent of such Business Tax on the first day of every subsequent calendar month following such first day of delinquency provided the amount of such penalties to be added shall in no event exceed fifty (50%) percent of the Business Tax due. The penalties provided in this subsection shall be assessed from the date when such deficiency was required to be paid pursuant to the provisions of this chapter.

6.04.180 Application - Initial.

- (a) Upon a Person making an application for the first Business Tax Certificate for a newly established or acquired Business, such Person shall furnish to the Collector a statement, upon a form provided by the Collector; setting forth the following information:
 - (1) The exact nature or kind of Business;
 - (2) The place where such Business is to be carried on, and if the same is not to be carried on at any permanent place of Business, the places of residence of the owners of same;
 - (3) In all cases where the amount of tax to be paid is measured by gross receipts, the application shall set forth such information as may be therein required and as may be necessary to determine the amount of the tax to be paid by the applicant;
 - (4) Any further information which the Collector may require.
 - (b) If the amount of the tax to be paid by the applicant is measured by gross receipts, he or she shall estimate the gross receipts for the period covered. Such estimate, if accepted by
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the Collector as reasonable, shall be used in determining the amount of tax to be paid by the applicant; provided, however, the amount of the tax so determined shall be tentative only, and such person shall, within 60 days after the expiration of the period covered, furnish the Collector with a statement, upon a form prescribed by the Collector, showing the applicant's actual gross receipts during the period covered, and the tax for such period shall be finally ascertained and paid in the manner provided by this chapter for the ascertaining and paying of such taxes, after deducting from the payment found to be due the amounts initially paid.

- (c) In all cases, the applicant shall, upon filing his or her application, pay no less than the prescribed minimum tax in advance, without being prorated, to cover the remaining portion of the current reporting period.
- (d) The Collector shall not issue to any such person another Business Tax Certificate for the same or any other Business until such Person shall have furnished to him or her a statement and paid the tax as herein required.

6.04.190 Application - Renewal.

In all cases, the applicant for the renewal of a Business Tax Certificate shall submit to the Collector for his or her guidance in ascertaining the amount of the tax to be paid by the applicant, a statement, upon a form prescribed by the Collector, setting forth such information concerning the applicant's Business during the preceding year as may be required by the Collector to enable him or her to ascertain the amount of the tax to be paid by said applicant pursuant to the provisions of this chapter.

6.04.200 Extensions of filing dates—Interest charges.

The Collector shall have the power, for good cause, to extend the time for filing any required sworn statement for a period not exceeding sixty (60) days and in such case to waive any penalty that would have otherwise accrued, except that twelve (12%) percent simple interest shall be added to any tax determined to be payable.

6.04.210 Refunds.

No refund of an overpayment of a Business Tax imposed by this chapter shall be allowed in whole or in part unless a claim for a refund is filed with the Collector within a period of one (1) years after the last day of the calendar month following the period for which the overpayment was made, and all such claims for refunds shall be filed with the Collector on forms the Collector furnishes in the manner prescribed by the Collector. Upon the filing of such a claim and when the Collector determines, in a reasonable time, that an overpayment has been made, the Collector may refund the amount overpaid.

6.04.220 Determinations of business classifications an administrative function.

The final determination of which Business or class of Business a Tax Certificate Holder or applicant for a Tax Certificate is engaged in, or about to engage in, shall be an administrative function of the City.

6.04.230 Applications for changes of business classifications.

- (a) In any case, where a Tax Certificate Holder or an applicant for a Tax Certificate believes that his or her Business is not assigned to the proper classification under this chapter because of circumstances peculiar to it, as distinguished from other Businesses of the same kind, he or she may apply to the Collector for reclassification. Such application shall contain such information as the Collector may deem necessary and require in order to determine whether the applicant's individual Business is properly classified. The Collector shall then conduct an investigation following which he or she shall assign the applicant's individual Business to the classification shown to be proper on the basis of such investigation. The proper classification is that classification which, in the opinion of the Collector, most nearly fits the applicant's Business. The reclassification shall not be retroactive but shall apply at the time of the next regularly ensuing calculation of the applicant's tax. No Business shall be classified more than once a year.
- (b) The Collector shall notify the applicant of the action taken on the application for reclassification. Such notice shall be given by serving it personally or by depositing it in the United States Post Office postage prepaid, addressed to the applicant at his or her last known address. Such applicant may, within 10 working days after the mailing or serving of such notices, make a written request to the Collector for a appeal hearing on the application's reclassification. If such a request is made within the time prescribed, the Collector shall cause the matter to be set for hearing before the City Council within 15 days. The Collector shall give the applicant at least 10 days' notice of the time and place of the hearing in the manner prescribed under section 1.12.020 for serving notice of the action taken on the application for reclassification. The City Council shall consider all evidence adduced and shall adopt a resolution reflecting its decision. The decision of the City Council shall be final.

6.04.240 Appeals on decisions of business classifications.

Any applicant or Tax Certificate Holder aggrieved by the Business classification decision of the City shall have the right of appeal to an impartial Hearing Officer as outlined by section 1.12.030 of the Code. Such appeal shall be taken by filing with the City Clerk, within fifteen (15) days after the notice of the decision of the City, a written statement setting forth the grounds for the appeal. The City Clerk shall set a time and place for a hearing on such appeal within thirty (30) days after the receipt of the appeal. Notwithstanding chapter 1.12 of the Code, the decisions and orders of the Hearing Officer shall be final and conclusive.

6.04.250 Rules and regulations.

The City Manager may promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary or desirable to aid in the enforcement of the provisions of this chapter.

6.04.260 Referrals to other agencies—Prepayment of taxes.

- (a) Referrals to other agencies. The Collector may refer to any governmental agency any statement and all other information submitted by persons subject to the provisions of this chapter in connection with the conduct of a Business regulated or supervised or otherwise the concern of any such agency, including agencies concerned with health regulations, zoning conformance, fire safety, police considerations, or any other safeguard of the public interest. (b) Prepayment of taxes. The Collector may advise any person filing a statement in connection with the payment of a Business Tax for a new or other Business not actually in operation that such person may desire to defer the payment of the Business Tax until the person has obtained whatever approval may be required in order to transact and carry on the Business until such Business is actually in operation. If any person does, however, pay the Business Tax in advance of the commencement of the operation of the Business, but does not operate the Business because City or other governmental agency did not grant an approval which is required by regulation or law in order for such Business to be transacted and carried on, then the Business Tax shall be refunded in full, after the person has informed Collector in a timely manner, to the person having paid such tax minus the application fee as set by resolution of the City Council and revised from time to time.

6.04.270 Enforcement.

- (a) It shall be the duty of the Collector to enforce each and all of the provisions of this chapter, and the various City departments shall render such assistance in the enforcement as may from time to time be required by the Collector, City Manager, or City Council.
- (b) The Collector, in the exercise of the duties imposed upon the Collector shall examine, or cause to be examined, all places of Business in the City to ascertain whether the provisions of this chapter have been complied with.
- (c) The Collector, and each designee, and any police officer or duly authorized inspector, shall have the power and authority to enter free of charge at any reasonable time any place of Business or to question any person, which Business or person is, or there is reasonable cause to believe such Business or person may be, subject to the provision of this chapter, and demand an exhibition of proof of Business Tax payment.
- (d) The Collector's designees who have satisfactorily completed a certified course in "Powers of Arrest" may thereafter exercise the powers of arrest as specified in Section 836.5 of the California Penal Code on any person who has committed a misdemeanor or infraction in their presence which is a violation of the provisions of this chapter.

6.04.280 Remedies cumulative.

All remedies prescribed in this chapter shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

6.04.290 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have adopted this chapter, and each section, subsection, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions be declared invalid or unconstitutional.

6.04.300 Violations—Penalties.

Any person violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring, or attempting to procure, the Business Tax certificate provided for in this chapter shall be deemed guilty of an infraction.

Article 2. Taxes

6.04.310 Determination of tax due based on gross receipts plus annual registration tax.

- (a) Every person who engages in Business within the City shall pay a Business Tax based upon Gross Receipts at the specified category rates listed in this section.
- (b) A flat rate of \$50 will be applied to the Base Gross Receipts, as defined by section 6.04.010, regardless of which category the Business falls under. If the Business makes less than the Base Gross Receipts but more than \$1, the Business will only pay \$50 in Business Tax. Any dollar amount in excess of the Base Gross Receipt, will be calculated by the rates below.
For example, if a Business has a Gross Receipt of \$700,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$200 ($[\$700,000 - \$500,000] \times .001$) for a total of \$250 in Business Tax.
- (c) If a Business has no Gross Receipts, as defined in section 6.04.010, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations for such Business. The cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges, and other expenses.
- (d) Categories of Businesses:
 - (1) CATEGORY 1: General retail, restaurants, hotels, and tour operators and any

Business not otherwise classified (0.001 X Gross Receipts in excess of the Base Gross Receipts)

For example, if a Business has a Gross Receipt of \$700,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$200 ($[\$700,000 - \$500,000] \times .001$) for a total of \$250 in Business Tax.

(A) Any establishment or Business that conducts retail (the sale of goods to ultimate consumers, usually in small quantities), or wholesale (the sale of goods in quantity, as to retailers or jobbers, for resale), or restaurant (an establishment where meals, prepared food, and/or beverages are served to customers).

(B) "Tour operator" means a Business that provides tours in the City for Compensation.

(2) CATEGORY 2: Wholesale and Manufacturing (0.0015 X Gross Receipt in excess of the Base Gross Receipts):

For example, if a Business has a Gross Receipt of \$700,000 and is a Category 2 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$300 ($[\$700,000 - \$500,000] \times .0015$) for a total of \$350 in Business Tax.

(A) "Manufacturing" includes every person conducting or carrying on a Business consisting of manufacturing, packing, or processing any goods, wares, merchandise, or commodities at a fixed place of Business within the City or conducting or carrying on a Business of cold storage or refrigeration.

(3) CATEGORY 3: Contractors and Services (0.002 X Gross Receipt in excess of the Base Gross Receipt):

For example, if a Business has a Gross Receipt of \$700,000 and is a Category 3 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$400 ($[\$700,000 - \$500,000] \times .002$) for a total of \$450 in Business Tax.

(A) Contractors: every person, firm, or corporation conducting, managing, or carrying on the Business of contractor, subcontractor, or builder; or engaging in the construction or repair of any buildings; or engaged in any engineering, construction, operating, or advertising as such, or representing himself as such, and regularly employing help for building construction, sewer construction, plumbing construction or general construction.

(B) "Services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part,

chapter, or section of this chapter, and shall include those professions that may require governmental certification or licensure, but not be limited to the services rendered by a person engaged in the practice or profession such as hairstylist, beautician or cosmetologist, aesthetician, or art instructor.

(4) CATEGORY 4: Professionals and Rental Units (Commercial and Residential) (0.003 X Gross Receipts in excess of the Base Gross Receipt):

For example, if a Business has a Gross Receipt of \$700,000 and is a Category 4 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$600 ($[\$700,000 - \$500,000] \times .003$) for a total of \$650 in Business Tax.

(A) "Professional services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter or section of this chapter, and shall include those professions generally requiring governmental certification or a professional degree, but not be limited to the services rendered by a person engaged in the practice or profession of law, medicine, surgery, dentistry, ophthalmologist, optometry, chiropractic, osteopathy, chiropody, dental technician, laboratory technician, physical therapist, mortician, undertaker, psychologist, psychotherapy, radiologist, speech therapist, veterinary, licensed financial planner, licensed investment counselor, real estate agent, real estate broker, stock/bond or security agent or broker, civil, mechanical, electrical, industrial, or other class of engineer, surveyor, geologist, appraiser, architect, accountant, real estate management, property management, income tax preparers, bookkeepers, income tax consultants, developer, or marriage counselors.

(B) Any Business, individual, or entity that leases, rents, or otherwise provides property to another individual or entity for compensation.

ATTACHMENT F

Resolution 3: Business Taxes including a flat rate of \$50 for the first \$500,000

Title 6 - BUSINESSES, PROFESSIONS AND TRADES

Chapter 6.04 BUSINESS TAXES

Chapter 6.04 BUSINESS TAXES

Sections:

6.04.010 Definitions.

6.04.020 Revenue measure.

6.04.030 Effect on other laws.

6.04.040 Business tax payments required.

6.04.050 Evidence of doing business.

6.04.060 Constitutional apportionment.

6.04.070 Exemptions.

6.04.080 Posting and keeping tax certificates.

6.04.090 Confidentiality and examination.

6.04.100 Failure to file statements or corrected statements.

6.04.110 Amount of business tax debt to city.

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~~**6.04.330 Business tax per unit**~~

~~**6.04.340 Business tax—Gross receipts**~~

~~**6.04.350 Limitations on the use and Location of cigarette vending machines**~~

~~**6.04.360 Limit on the amount of tax**~~

Article 1. General Provisions

6.04.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

~~"Average number of employees" means to determine the average number of employees for the purpose of fixing the amount of business tax due under this definition, the employer shall make the following calculations: The number of individuals who worked an average of thirty two (32) hours or more each week during the period as shown on Form DE6 of the State of California shall be totaled (subtotal 1). The number of individuals who worked an average of less than thirty two (32) hours per week during the period shall be totaled, then divided by 2 (subtotal 2). All other employees as defined in subsection (f) of this section which are not shown on Form DE6 shall be totaled (subtotal 3). Subtotals 1, 2, and 3 shall be added together in order to arrive at a grand total of employees for the period. This method shall be followed for each of the four (4) preceding quarters. The grand total of employees for each of the four (4) quarters shall be added together and the sum divided by four (4) to arrive at the average numbers of employees. The sum shall be rounded to the nearest whole number.~~

~~In the case of beginning businesses, the number shall be estimated by the applicant and the fee paid based on the estimate, but shall be adjusted to the actual number within thirty (30) days after the close of the City's fiscal year.~~

"Base Gross Receipt" means the first \$500,000 of Gross Receipt

"Business" means and includes full-time or part-time professional services and retail, wholesale, manufacturing, or other occupations, trades, or callings of any kind, whether or not carried on for profit or livelihood.

"Business tax" means the Business activity tax.

"City" means the City of Tracy, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

"Code" means the Tracy Municipal Code, as amended from time to time.

"Collector" means the Finance Director of the City or other designees charged by the Finance Director or City Manager of the City, as the case may be, with the administration of the provisions of this chapter.

"County" means the County of San Joaquin.

"Constitution" means the United States Constitution or the California Constitution, as the case may be.

"Employee" means all persons engaged in the operation or conduct of any Business, whether as a member of the owner's family, agent, manager, solicitor, and all other persons employed or working in said Business including, without limitations of the foregoing, all individuals who derive all or part of their income from commissioned sales. For purposes of computing tax based on employees, the average number of employees per year, as defined in this section, will be used.

"Fixed place of business" means premises in the City where a Business is conducted from day to day and regularly kept open for the purposes of such Business, also referred to as "regular place of business."

"Gross Receipts" means the total amount of the sale price of all sales, and/or the total amount charged or received for the performance of any act or service or employment, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act, service or employment is done as a part of or in connection with the sale of materials, goods, wares or merchandise, and when such act, service or employment occurs as a result of any activity within the City. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, except as excluded in this subsection, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever as shown by either the Federal or State income tax return required to be filed by such person.

Where the Gross Receipts, as defined above, are less than the cost of operations of the Business, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations. Such cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges and other expenses.

Excluded from "gross receipts" shall be:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold;
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

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- (d) Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;
 - (e) Amounts collected for others where the Business is acting as an agent or trustee to the extent that such amounts are paid to those whom collected;
 - (f) The amount of each single sale to a single customer in excess of fifty thousand dollars (\$50,000.00) where the gross profits derived therefrom does not exceed one percent (1%) of the sale price; and

The amount of gross receipts which has been the measure of a license tax paid to any other City. "Hearing officer" means an impartial person designated by the City Manager, as defined in Chapter 1.12 of the Tracy Municipal Code.

~~"License certificate" means the business license tax certificate and any other identifying decal or marker as may be required by the Collector.~~

~~"License certificate holder" means the person, natural or otherwise, to whom a business license tax certificate has been issued.~~

"Manufacturing" means making materials, raw or partly finished, into wares suitable for use by persons other than the manufacturer, including, but not limited to, fabrication, processing, packing, bottling, assembling, canning, compounding, and forging.

"Not-for-profit entities" means any organization that qualifies under Section 501, subsection (c) (3) of the United States Internal Revenue Code or equivalent federal statute.

"Peddler" means any person who goes from house to house or from place to place or in or along the streets of the City selling and making an immediate delivery, or offering for sale and immediate delivery, anything of value in his possession to persons other than dealers in such commodities.

"Person" means any individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, excepting: the United States of America, the State of California, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

"Solicitor" means a person engaged in soliciting, canvassing, or taking orders from house to house, or from place to place, or by telephone, or by any other means of communication for any goods, wares, or merchandise or any article to be delivered in the future, or for services to be performed in the future, or for making, manufacturing, or repairing any article whatsoever for future delivery, or for subscriptions to periodicals or tickets of admission to entertainments or memberships in any clubs.

"State" means the State of California.

"Sworn statement" means an affidavit sworn to before a person authorized to take oaths or a declaration or certification made under penalty of perjury.

"Tax Certificate" means the Business tax certificate and any other identifying decal or marker as may be required by the Collector for purposes of this Chapter 6.04.

"Tax Certificate Holder" means the Person to whom a Tax Certificate has been issued.

"Transient business" means every Business not conducted at a "fixed place of business" or at a regular place of Business, whether the person conducting such transient business is or is not a resident of the City.

"Warehousing business" means every Business conducted solely for the purpose of maintaining or renting space for the storage of any kind of property.

"Wholesale business" means every Business conducted solely for the purpose of selling goods, wares, or merchandise in wholesale lots for resale.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.020 Revenue measure.

This chapter is enacted for the sole purpose of raising revenue for municipal purposes and is not intended for regulation. The issuance of any Tax certificate shall not be construed as authorizing any Business to operate without first complying with all other applicable laws and regulations.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.030 Effect on other laws.

- (a) Persons required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of any similar tax for the privilege of doing such Business required by any other law of the City, the County or the State and shall remain subject to the regulatory provisions of those other laws.
- (b) Any Person required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of such Business Tax, notwithstanding that such Business is not in compliance with zoning, health, safety, or other regulatory provisions of the Code or other State or federal law. Compliance with the provisions of this chapter shall not constitute evidence that such Business is in compliance with any other such regulations or provisions of law.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.040 Required business tax payment.

- (a) It shall be unlawful for any person to transact and carry on any Business, trade, profession, calling, or occupation in the City without first having paid the Business Tax, as prescribed in this chapter or without complying with any and all applicable requirements of this chapter.

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- (b) This section shall not be construed to require any Person to pay a Business Tax or to comply with any other requirement of this chapter prior to doing Business within the City if such requirements conflict with applicable statutes of the United States or of the State.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.050 Evidence of doing business.

When any Person, by the use of signs, circulars, cards, telephone books, or newspapers, shall advertise, hold out, or represent that the Person is in Business in the City, or when any Person holds an active license or permit issued by a governmental agency indicating that the Person is in Business in the City, or when any Person makes a sale, takes an order, renders a commercial service, or performs any other similar act within the City, and such Person fails to deny by a sworn statement given to the Collector that the Person is not conducting a Business in the City after being requested to do so by the Collector, then such facts shall be considered prima facie evidence that the Person is conducting a Business in the City.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.060 Constitutional apportionment.

- (a) None of the Business Taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the Equal Protection and Due Process Clauses of the Constitution (b) In any case where a Business Tax is believed by a Person transacting or carrying on any Business in the City to place an undue burden upon interstate commerce or be violative of such constitutional clauses, such Person may apply to the Collector for an adjustment of the tax. Such application may be made before or at the time the tax is required to be paid or within six (6) months after the payment of the prescribed Business Tax. The applicant, by sworn statement and supporting testimony, shall show the applicant's method of Business, the gross volume or estimated gross volume of such Business, and such other information as the Collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Collector shall then conduct an investigation and, after having first obtained the written approval of the City Attorney, shall fix as the Business Tax for the applicant an amount that is reasonable and nondiscriminatory or, if the Business Tax has already been paid, shall order a refund of the amount over and above the Business Tax so fixed. Such investigation, fixing of the Business Tax, and order of refund shall be accomplished within a reasonable time upon receiving the requisite information by the City. In fixing the Business Tax, the Collector shall have the power to fix the Business Tax on any basis which will assure that the Business Tax assessed shall be uniform with that assessed on Businesses of like nature, so long as the amount assessed does not exceed the Business Tax prescribed by this chapter. If it is determined that no Business Tax is due, the applicant exempt from the Business Tax shall obtain, and the Collector shall issue, a Tax Certificate indicating such exemption from the tax.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.070 Exemptions

- (a) Nothing contained in this chapter shall be deemed or construed as applying to any person transacting, engaging in, and carrying on any Business exempt by virtue of the Constitution or applicable statutes of the United States or of the State from payment of taxes prescribed herein.
- (b) Exemptions Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, except that any such Person shall be required to obtain a tax-exempt Tax Certificate:
 - (1) Not-for-profit entities, as defined in this Code;
 - (2) Banks, including national banking associations as provided by subsection 1(a) of Section 16 of Article XIII of the State Constitution; and
 - (2) Insurance companies and associations as provided by Section 14 of Article XIII of the State Constitution provided however that insurance brokers shall not be excluded under this section.
- (c) Exemptions Not Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, and shall not be required to obtain a tax-exempt Tax Certificate:
 - (1) Any delivery by a firm lacking a fixed place of Business in the City, which delivery is occasional and incidental to a Business carried on outside the City provided, however, that four (4) or more deliveries within any twelve (12) month period shall be considered proof that any further delivery is not occasional and incidental to such Business;
 - (2) Any public utility or other organization which is wholly owned and operated by a political subdivision of the State and any public district organized under the laws of the State; and
 - (3) Any vehicle which is subject to the Motor Carriers of Property Permit Fee Act (California Revenue and Taxation Code section 7231 et. al); provided, however, this exemption shall only apply to the transportation Business.
- (d) Claims for exemption. Any Person desiring to claim an exemption from the payment of a Business Tax and to have a free tax-exempt Tax Certificate issued shall make an application therefor upon a form prescribed by the City and shall furnish such information and make such affidavits as may be required, on an annual basis. Upon the determination being made that the applicant is entitled to an exemption from the payment of the Business Tax for any reason set forth in this chapter, the City, upon the applicant complying with the provisions of this chapter or any other law of the City which may require a permit for the doing of the particular act proposed to be done, shall issue a free

tax-exempt Tax Certificate to such Person, which certificate shall show upon its face that the Business is exempt from the Business Tax.

- (e) Revocation of exemptions. The City may revoke any tax-exempt Tax Certificate granted pursuant to the provisions of this chapter upon information that the Business is not entitled to the exemption as provided therein. In such revocation, the procedure to be followed and the right of appeal shall be as provided in this chapter for the determination of a disputed tax.
- (f) Sworn statements. The City may require the filing of a sworn statement from any person claiming to be excluded by the provisions of the section, which statement shall set forth all the facts upon which the exclusion is claimed.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.080 Posting and keeping Tax Certificates – Record keeping.

- (a) Any Person carrying on Business at a fixed place of Business in the City shall keep the Tax Certificate posted in a conspicuous place on the premises where such Business is carried on.
- (b) Every Tax Certificate holder not having a fixed place of Business in the City shall keep the Tax Certificate upon his or her person, or if required by the Collector affixed in plain view upon any cart, vehicle, van, or other movable structure or device, at all times while transacting or carrying on the Business for which it is issued.
- (c) All Persons subject to the provisions of this chapter shall keep complete records of Business transactions, including sales, receipts, purchases, and other expenditures, and shall retain all such records for examination by the Collector. Such records shall be maintained for a period of at least three years. No Person required to keep records under this section shall refuse to allow authorized representatives of the Collector to examine said records at reasonable times and places.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.090 Information confidentiality.

No statement shall be conclusive as to the matters set forth in any application filed under the provisions of this chapter and neither the filing thereof, the assessment or payment of any tax, nor the issuance of any Tax Certificate shall preclude the City from collecting by appropriate action such sum as is actually due and payable. Such statement, and each of the several items therein contained, shall be subject to audit and verification by the Finance Director, who is hereby authorized to examine, audit, and inspect such books and records of any Tax Certificate Holder or applicant for a Tax Certificate as may be necessary for the judgment of the Collector to verify or ascertain the amount of Business Tax due.

- (a) It is unlawful for the Collector or any person having an administrative duty under the provisions of this chapter to make known in any manner whatever the Business affairs,

operations, or information obtained by an investigation of records and equipment of any Person required to have a Tax Certificate, or pay a Business Tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or copy of either, or any book containing any abstract particulars thereof to be seen or examined by any person. Provided that nothing in this section shall be construed to prevent:

- (1) The disclosure to, or the examination of records and equipment by, another City official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter, or collecting taxes imposed hereunder;
- (2) The disclosure of information to, or the examination of records by Federal or State officials, or the tax officials of another city or county, or city and county, if a reciprocal arrangement exists, or to a grand jury or court of law, upon subpoena;
- (3) The disclosure of information and results of the examination of records of particular taxpayers, or relating to particular payers, to a court of law in a proceeding brought to determine the existence or amount of any Business Tax liability of the particular taxpayers to the City;
- (4) The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included to the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Collector may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;
- (5) The disclosure of the names and addresses of persons to whom Business Tax receipts have been issued, and the general type or nature of their Business;
- (6) The disclosure by way of public meeting or otherwise of such information as may be necessary to the City Council in order to permit it to be fully advised as the facts when a taxpayer files a claim for refund of Business Taxes or submits an offer of compromise with regard to a claim asserted against him by the City for Business Taxes, or when acting upon any other matter;
- (7) The disclosure of general statistics regarding taxes collected or Business done in the City.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.100 Failure to file statements or corrected statements.

- (a) If any Person fails to file any required statement within the time prescribed, or if, after demand therefor made by the Collector, such Person fails to file a corrected statement, or

if any Person subject to the tax imposed by this chapter fails to submit the information required by the Collector necessary to determine the Business Tax due and payable, or if the Collector is not satisfied with the information supplied and the statement filed, the Collector may determine the amount of the Business Tax due from such Person by means of such information as he may be able to obtain.

- (b) If such a determination is made, the Collector shall give notice of the amount so assessed by serving such notice electronically, personally, or by depositing it in the United States Post Office, postage prepaid, addressed to the Person so assessed at his last known address.
- (c) Assessments so established shall be paid within fifteen (15) days after the mailing of such notice, subject to the provisions of section 6.04.180 of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.110 Amount of business tax debt to the city.

The amount of any Business Tax imposed by this chapter shall be deemed a debt to the City, and any Person carrying on any trade, calling, profession or occupation mentioned in this chapter without having a Tax Certificate from the City shall be liable to an action in the name of the City in any court of competent jurisdiction for the amount of the Business Tax by this chapter imposed on such trade, calling, profession, or occupation.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.120 Effect of convictions.

The conviction and punishment of any Person for transacting any trade, calling, profession, or occupation without a tax shall not excuse or exempt such person from the payment of any Business Tax due or unpaid at the time of such conviction, and nothing in this chapter shall prevent a criminal prosecution for any violation of the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.130 Duty of City to issue business tax certificates.

- (a) It shall be the duty of the City to prepare and issue a Tax Certificate pursuant to the provisions of this chapter for every person liable to pay a Business Tax and to state in each Tax Certificate the period of time covered thereby; the name of the person or Business to whom issued; the Business classification to which the Tax Certificate is issued; the trade, calling, profession, or occupation to which the license certificate is issued and the location or place of Business where such trade, calling, profession, or occupation is to be carried(b)
No Tax Certificate granted or issued under any provision of this chapter shall be in any manner transferred or assigned, nor shall such Tax Certificate authorize any Person, other than is therein mentioned or named, to not pay a Business Tax.
- (c) The City may make a charge of Ten (\$10.00) Dollars for each duplicate Tax Certificate issued to replace any Tax Certificate issued under the provisions of this chapter that has

been lost or destroyed. In no case shall any mistake made by the City in stating the amount of a Business Tax prevent or prejudice the collection by the City of what shall be due from any Person carrying on a trade, calling, profession, or occupation subject to Business Tax under this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.140 Business taxes payable at City offices.

All Business Taxes shall be paid in advance in lawful money of the United States to the City of Tracy, in a manner prescribed by the Collector.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.150 Separate business tax certificate required—Warehouses excepted.

A separate Tax Certificate shall be obtained for each branch establishment or location. Warehouses and distributing establishments used in connection with and incidental to a Business Taxed under the provisions of this chapter shall not be deemed to be separate places of Business or branch establishments.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.160 Business tax certificate period.

No Tax Certificate shall be issued for a period of more than twelve (12) months of the City's fiscal year beginning July 1 and ending June 30. Any application for a Tax Certificate received by the City mid-fiscal year will use a prospective estimate of how much the applicant would pay had they applied at the beginning of the Tax Certificate period.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.170 Business taxes—Payment, delinquencies, and penalties.

- (a) All Business Taxes shall be due on the first day of July and delinquent at 5:00 p.m. on the last day of July.
- (b) For failure to pay a Business Tax when due, the Collector shall add a penalty of ten (10%) percent of such Business Tax on the first day of delinquency and shall add a further penalty of ten (10%) percent of such Business Tax on the first day of every subsequent calendar month following such first day of delinquency provided the amount of such penalties to be added shall in no event exceed fifty (50%) percent of the Business Tax due. The penalties provided in this subsection shall be assessed from the date when such deficiency was required to be paid pursuant to the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.180 Application - Initial.

- (a) Upon a Person making an application for the first Business Tax Certificate for a newly established or acquired Business, such Person shall furnish to the Collector a statement, upon a form provided by the Collector; setting forth the following information:
 - (1) The exact nature or kind of Business;
 - (2) The place where such Business is to be carried on, and if the same is not to be carried on at any permanent place of Business, the places of residence of the owners of same;
 - (3) In all cases where the amount of tax to be paid is measured by gross receipts, the application shall set forth such information as may be therein required and as may be necessary to determine the amount of the tax to be paid by the applicant;
 - (4) Any further information which the Collector may require.
- (b) If the amount of the tax to be paid by the applicant is measured by gross receipts, he or she shall estimate the gross receipts for the period covered. Such estimate, if accepted by the Collector as reasonable, shall be used in determining the amount of tax to be paid by the applicant; provided, however, the amount of the tax so determined shall be tentative only, and such person shall, within 60 days after the expiration of the period covered, furnish the Collector with a statement, upon a form prescribed by the Collector, showing the applicant's actual gross receipts during the period covered, and the tax for such period shall be finally ascertained and paid in the manner provided by this chapter for the ascertaining and paying of such taxes, after deducting from the payment found to be due the amounts initially paid.
- (c) In all cases, the applicant shall, upon filing his or her application, pay no less than the prescribed minimum tax in advance, without being prorated, to cover the remaining portion of the current reporting period.
- (d) The Collector shall not issue to any such person another Business Tax Certificate for the same or any other Business until such Person shall have furnished to him or her a statement and paid the tax as herein required.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.190 Application - Renewal.

In all cases, the applicant for the renewal of a Business Tax Certificate shall submit to the Collector for his or her guidance in ascertaining the amount of the tax to be paid by the applicant, a statement, upon a form prescribed by the Collector, setting forth such information concerning the applicant's Business during the preceding year as may be required by the Collector to enable him or her to ascertain the amount of the tax to be paid by said applicant pursuant to the provisions of this chapter. ~~(Ord. 1044 § 1 (part), 2002)~~

6.04.200 Extensions of filing dates—Interest charges.

The Collector shall have the power, for good cause, to extend the time for filing any required sworn statement for a period not exceeding sixty (60) days and in such case to waive any penalty that would have otherwise accrued, except that twelve (12%) percent simple interest shall be added to any tax determined to be payable.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.210 Refunds.

No refund of an overpayment of a Business Tax imposed by this chapter shall be allowed in whole or in part unless a claim for a refund is filed with the Collector within a period of one (1) years after the last day of the calendar month following the period for which the overpayment was made, and all such claims for refunds shall be filed with the Collector on forms the Collector furnishes in the manner prescribed by the Collector. Upon the filing of such a claim and when the Collector determines, in a reasonable time, that an overpayment has been made, the Collector may refund the amount overpaid.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.220 Determinations of business classifications an administrative function.

The final determination of which Business or class of Business a Tax Certificate Holder or applicant for a Tax Certificate is engaged in, or about to engage in, shall be an administrative function of the City.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.230 Applications for changes of business classifications.

- (a) In any case, where a Tax Certificate Holder or an applicant for a Tax Certificate believes that his or her Business is not assigned to the proper classification under this chapter because of circumstances peculiar to it, as distinguished from other Businesses of the same kind, he or she may apply to the Collector for reclassification. Such application shall contain such information as the Collector may deem necessary and require in order to determine whether the applicant's individual Business is properly classified. The Collector shall then conduct an investigation following which he or she shall assign the applicant's individual Business to the classification shown to be proper on the basis of such investigation. The proper classification is that classification which, in the opinion of the Collector, most nearly fits the applicant's Business. The reclassification shall not be retroactive but shall apply at the time of the next regularly ensuing calculation of the applicant's tax. No Business shall be classified more than once a year.
- (b) The Collector shall notify the applicant of the action taken on the application for reclassification. Such notice shall be given by serving it personally or by depositing it in the United States Post Office postage prepaid, addressed to the applicant at his or her last known address. Such applicant may, within 10 working days after the mailing or serving of

such notices, make a written request to the Collector for a appeal hearing on the application's reclassification. If such a request is made within the time prescribed, the Collector shall cause the matter to be set for hearing before the City Council within 15 days. The Collector shall give the applicant at least 10 days' notice of the time and place of the hearing in the manner prescribed under section 1.12.020 for serving notice of the action taken on the application for reclassification. The City Council shall consider all evidence adduced and shall adopt a resolution reflecting its decision. The decision of the City Council shall be final.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.240 Appeals on decisions of business classifications.

Any applicant or Tax Certificate Holder aggrieved by the Business classification decision of the City shall have the right of appeal to an impartial Hearing Officer as outlined by section 1.12.030 of the Code. Such appeal shall be taken by filing with the City Clerk, within fifteen (15) days after the notice of the decision of the City, a written statement setting forth the grounds for the appeal. The City Clerk shall set a time and place for a hearing on such appeal within thirty (30) days after the receipt of the appeal. Notwithstanding chapter 1.12 of the Code, the decisions and orders of the Hearing Officer shall be final and conclusive.

~~(Ord. 1111 § 4 Exh. A (part), 2007; Ord. 1044 § 1 (part), 2002)~~

6.04.250 Rules and regulations.

The City Manager may promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary or desirable to aid in the enforcement of the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.260 Referrals to other agencies—Prepayment of taxes.

- (a) Referrals to other agencies. The Collector may refer to any governmental agency any statement and all other information submitted by persons subject to the provisions of this chapter in connection with the conduct of a Business regulated or supervised or otherwise the concern of any such agency, including agencies concerned with health regulations, zoning conformance, fire safety, police considerations, or any other safeguard of the public interest. (b) Prepayment of taxes. The Collector may advise any person filing a statement in connection with the payment of a Business Tax for a new or other Business not actually in operation that such person may desire to defer the payment of the Business Tax until the person has obtained whatever approval may be required in order to transact and carry on the Business until such Business is actually in operation. If any person does, however, pay the Business Tax in advance of the commencement of the operation of the Business, but does not operate the Business because City or other governmental agency did not grant an approval which is required by regulation or law in order for such Business to be transacted and carried on, then the Business Tax shall be refunded in full, after the

person has informed Collector in a timely manner, to the person having paid such tax minus the application fee as set by resolution of the City Council and revised from time to time.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.270 Enforcement.

- (a) It shall be the duty of the Collector to enforce each and all of the provisions of this chapter, and the various City departments shall render such assistance in the enforcement as may from time to time be required by the Collector, City Manager, or City Council.
- (b) The Collector, in the exercise of the duties imposed upon the Collector shall examine, or cause to be examined, all places of Business in the City to ascertain whether the provisions of this chapter have been complied with.
- (c) The Collector, and each designee, and any police officer or duly authorized inspector, shall have the power and authority to enter free of charge at any reasonable time any place of Business or to question any person, which Business or person is, or there is reasonable cause to believe such Business or person may be, subject to the provision of this chapter, and demand an exhibition of proof of Business Tax payment.
- (d) The Collector's designees who have satisfactorily completed a certified course in "Powers of Arrest" may thereafter exercise the powers of arrest as specified in Section 836.5 of the California Penal Code on any person who has committed a misdemeanor or infraction in their presence which is a violation of the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.280 Remedies cumulative.

All remedies prescribed in this chapter shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.290 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have adopted this chapter, and each section, subsection, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions be declared invalid or unconstitutional.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.300 Violations—Penalties.

Any person violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring, or attempting to procure, the Business Tax certificate provided for in this chapter shall be deemed guilty of an infraction.

~~(Ord. 1044 § 1 (part), 2002)~~

Article 2. Taxes

~~6.04.310 Business tax per average number of employees.~~

~~Each person transacting and carrying on a business not specifically classified by other sections of this chapter shall pay an annual business tax of One hundred and no/100ths (\$100.00) Dollars which covers one owner, plus the sum of Twenty and no/100ths (\$20.00) Dollars for each additional employee or owner. Said business tax shall be determined annually based upon the average number of employees of the business in the City's preceding year.~~

~~Business taxes under this section for new businesses commenced on or after the first day of October shall be prorated as follows:~~

Date of commencement of business	Pro-rated tax
October 1 through December 31	¾ of annual business tax
January 1 through March 31	½ of annual business tax
April 1 through June 30	¼ of annual business tax

~~(Ord. 1044 § 1 (part), 2002)~~

~~6.04.320 Business tax—Flat fee.~~

~~Every person who carries on the following business activities within the City shall pay a business tax based upon the rates and in the classifications set forth below:~~

- ~~Advertising;~~
- ~~Amusements;~~
- ~~Auctioneers;~~
- ~~Card tables;~~
- ~~Contractors;~~
- ~~Dances;~~
- ~~Fire sales, bankruptcy, close-out;~~
- ~~Outside business;~~
- ~~Palmistry;~~
- ~~Peddlers;~~

Solicitors;
Street musicians, Entertainers;
Christmas tree lots, Pumpkin patches;

~~(a) Advertising. For accomplishing advertising for others by the following means, the business taxes shall be:~~

~~(1) By handbills, dodgers, stickers, advertising samples, circulars, booklets, or similar devices, Eight and no/100ths (\$8.00) Dollars per day or Twenty Eight and no/100ths (\$28.00) Dollars per quarter for each person engaged in the distribution or managing the distribution thereof (see sections 4.12.1140 through 4.12.1170 of this code);~~

~~(2) By outdoor billboards, Eighty and no/100ths (\$80.00) Dollars per year, or fraction thereof, for each billboard;~~

~~(3) By means of stereopticon, biograph, searchlight, moving pictures, or similar devices, Twenty Five and no/100ths (\$25.00) Dollars per month for each machine or device. The provisions of this subsection shall not apply to licensed motion picture theaters; and~~

~~(4) By amplified sound or display advertisements over ten (10') feet in any dimension attached to a ground or airborne vehicle, Fifteen and no/100ths (\$15.00) Dollars per month per vehicle.~~

~~(b) Amusements.~~

~~(1) The business taxes for amusement rides and similar concessions shall be Seven and no/100ths (\$7.00) Dollars per day or Thirty and no/100ths (\$30.00) Dollars per quarter, or fraction thereof, for each such ride or concession.~~

~~(2) The business taxes for carnivals, circuses or tent shows shall be Four Hundred and no/100ths (\$400.00) Dollars for the first day and Two Hundred Fifty and no/100ths (\$250.00) Dollars for each additional day. When a carnival or circus tax is paid, no additional license shall be required for the concessions, shows, or rides within the carnival.~~

~~(c) Auctioneers. (See article 7 of chapter 4.12 of this Code).~~

~~(d) Card tables and card rooms. (See sections 4.04.030 and 4.04.040 of this Code).~~

~~(e) Contractors. The business taxes for general contractors, subcontractors, and specialty contractors not having a fixed place of business within the City shall be One Hundred Twenty and no/100ths (\$120.00) Dollars per year or Forty and no/100ths (\$40.00) Dollars per quarter, or fractional part thereof.~~

~~(f) Dances. (See article 2 of chapter 4.04 of this Code).~~

~~(g) Outside businesses. Every person not having a fixed place of business within the City who engages in business within the City and is not subject to the other~~

provisions of this chapter shall have the option to pay a business tax at the same rate prescribed in this chapter for persons engaged in the same type of business and having a fixed place of business within the City, or pay a flat rate of One hundred (\$100.00) Dollars.

- ~~(h) Palmistry. (See section 4.12.180 of this Code).~~
- ~~(i) Peddlers and candy and lunch wagons, stands, and vehicles. The business taxes for each peddler and each candy and lunch wagon, stand, kiosk or vehicle shall be Twenty Five and no/100ths (\$25.00) Dollars per quarter, or fractional part thereof.~~
- ~~(j) Solicitors.
 - ~~(1) Every person conducting the business of soliciting within the City shall pay a business tax of One Hundred and no/100ths (\$100.00) Dollars quarterly or Ten and no/100ths (\$10.00) Dollars per day with a three day minimum. No credit shall be received for any daily tax paid in the event a quarterly License certificate is thereafter obtained.~~
 - ~~(2) The payment of such license tax shall not relieve any solicitor from obtaining a permit, as provided in section 4.12.200 and following.~~
 - ~~(3) Where a payment or deposit is demanded in advance of the final delivery, a bond shall be furnished to the City by each such person engaged in the business of canvassing, soliciting, or taking orders for goods, wares, merchandise, or any article or for services to be performed.

Such bond shall be in the penal sum of Five Hundred and no/100ths (\$500.00) Dollars executed by a surety company acceptable to the City, or in lieu thereof, a cash bond of equal amount, conditioned upon the making of the final delivery of the goods ordered or services to be performed, in accordance with the terms in such order, or, failing therein, that the advance payment on such order be refunded within sixty (60) days after the contract delivery date.~~~~
- ~~(k) Street musicians/Entertainers. The business taxes for street musicians or entertainers shall be Fifteen and no/100ths (\$15.00) Dollars per day per operator or employee.~~
- ~~(l) Christmas tree lots and pumpkin patches. Christmas tree lots and pumpkin patches shall pay a business tax of One Hundred and no/100ths (\$100.00) Dollars per season, except where business is conducted in connection with another regularly established place of business for which a License certificate has been issued.~~

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.330 Business tax per unit.

Every person transacting and carrying on the businesses or activities herein enumerated shall pay a business tax as follows:

~~(a) Rental property.~~

- ~~(1) Any person owning and conducting, operating, renting, or leasing a rooming house, boardinghouse, apartment house, lodging house, trailer park, mobile home court, three or more residential units, or commercial building, with the exception of hotels and motels, shall pay annually the following business tax: Sixty and no/100ths (\$60.00) Dollars for the first six (6) units plus Five and no/100ths (\$5.00) Dollars for each additional unit over six (6). The provisions of this section shall not apply to subleases. A unit is defined as an individual house, a living space in a multiple dwelling, or a defined space within a commercial building.~~
- ~~(2) The provisions of this section shall apply to persons engaged in renting, or leasing real property to governmental entities.~~
- ~~(3) The taxes provided for in this section shall be in addition to any business tax which may be required to be paid by real estate brokers, agents, or other persons engaged in business and taxed pursuant to other provisions of this chapter.~~

~~Business taxes under this section for new businesses commenced on or after the first day of October shall be pro-rated as follows:~~

Date of Commencement of Business	Pro-rated Tax
October 1 through December 31	¾ of annual business tax
January 1 through March 31	½ of annual business tax
April 1 through June 30	¼ of annual business tax

- ~~(b) Delivery vehicles. Every person who collects, gathers, picks up or loads goods, wares or merchandise within the City, or who delivers good, wares or merchandise within the City from or to a point inside or outside the City by means of a motor vehicle four (4) or more times within any twelve (12) month period, is assessed a business tax in the sum of Ninety and no/100ths (\$90.00) Dollars for the first vehicle plus Twenty Five and no/100ths (\$25.00) Dollars for each additional vehicle.~~

~~(1) A vehicle delivering to or for a person who is a License certificate holder with a fixed place of business within the City shall be exempt from the provisions of this section when such vehicle is the property of that person.~~

~~{Ord. 1044 § 1 (part), 2002}~~

~~6.04.340 Business tax—Gross receipts.~~

~~Any person engaged in the business of selling merchandise, services, or information by means of coin-operated devices in the City shall pay a business tax per fiscal year, or fractional part thereof, for each dollars of gross receipts derived there from as follows:~~

ANNUAL GROSS SALES OR RECEIPTS	ANNUAL BUSINESS TAX
Under \$10,000.00	\$25.00
\$10,001.00 to \$30,000.00	35.00
\$30,001.00 to \$50,000.00	55.00
\$50,001.00 and over	75.00

~~In addition, upon renewals such person shall furnish information on the number of such devices used in such business. In the event any such device shall be located in the City without having been so registered, such device may be impounded by the City until claimed and registered and a license certificate is obtained by such claimant. Applications for the license certificates required by this chapter shall be made to the Collector on forms the Collector provides, shall be signed by the applicant, and shall contain the following information in addition to whatever additional information the Collector deems necessary:~~

- ~~(a) The name, occupation, and address of the applicant;~~
- ~~(b) The location of the premises where the electrical musical device, vending machine, or weighing machine is to be placed, maintained to be operated, or operated, and, if such devices are to be placed, maintained to be operated, or operated in connection with any other business or calling, the character of such business or calling and the nature of the owner of such business or calling;~~
- ~~(c) A complete description of the type of device, showing the name of the machine and any identifying number or other identifying features and the manner in which it is to be placed, maintained, or operated;~~
- ~~(d) The nature of the applicant's interest in or title to the device for which the license certificate is sought, and, if the applicant does not own the device, the name of the owner of such device; and~~
- ~~(e) If the application is for a license certificate to operate and/or maintain a vending machine for cigarettes or other tobacco products, a complete statement as to the~~

manner in which the provisions of section 6.04.350 of this Article shall be complied with.

(Ord. 1044 § 1 (part), 2002)

6.04.350 Limitations on the use and locations of cigarette vending machines.

It is unlawful to own, operate, or maintain a vending machine for cigarettes or other tobacco products within the City unless:

- (a) ~~The machine is located within a building; and~~
- (b) ~~For all hours during which the public has access to such building where the machine is located, there is an adult clerk or attendant on duty who will be responsible for supervising the operation of such machine.~~

(Ord. 1044 § 1 (part), 2002)

6.04.360 Limit on amount of tax.

~~Notwithstanding any provisions of this Article, the maximum business tax assessable to each business subject to a business tax under this Article shall be Two Thousand and no/100ths (\$2,000.00) Dollars per year.~~

(Ord. 1044 § 1 (part), 2002)

6.04.310 Determination of tax due based on gross receipts plus annual registration tax.

- (a) Every person who engages in Business within the City shall pay a Business Tax based upon Gross Receipts at the specified category rates listed in this section.
- (b) A flat rate of \$50 will be applied to the Base Gross Receipts, as defined by section 6.04.010, regardless of which category the Business falls under. If the Business makes less than the Base Gross Receipts but more than \$1, the Business will only pay \$50 in Business Tax. Any dollar amount in excess of the Base Gross Receipt, will be calculated by the rates below.
For example, if a Business has a Gross Receipt of \$700,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$200 ([\$700,000-\$500,000] x .001) for a total of \$250 in Business Tax.
- (c) If a Business has no Gross Receipts, as defined in section 6.04.010, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations for such Business. The cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges, and other expenses.

(d) Categories of Businesses:

- (1) CATEGORY 1: General retail, restaurants, hotels, and tour operators and any Business not otherwise classified (0.001 X Gross Receipts in excess of the Base Gross Receipts)

For example, if a Business has a Gross Receipt of \$700,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$200 ([\$700,000-\$500,000] x .001) for a total of \$250 in Business Tax.

(A) Any establishment or Business that conducts retail (the sale of goods to ultimate consumers, usually in small quantities), or wholesale (the sale of goods in quantity, as to retailers or jobbers, for resale), or restaurant (an establishment where meals, prepared food, and/or beverages are served to customers).

(B) “Tour operator” means a Business that provides tours in the City for Compensation.

- (2) CATEGORY 2: Wholesale and Manufacturing (0.0015 X Gross Receipt in excess of the Base Gross Receipts):

For example, if a Business has a Gross Receipt of \$700,000 and is a Category 2 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$300 ([\$700,000-\$500,000] x .0015) for a total of \$350 in Business Tax.

(A) “Manufacturing” includes every person conducting or carrying on a Business consisting of manufacturing, packing, or processing any goods, wares, merchandise, or commodities at a fixed place of Business within the City or conducting or carrying on a Business of cold storage or refrigeration.

- (3) CATEGORY 3: Contractors and Services (0.002 X Gross Receipt in excess of the Base Gross Receipt):

For example, if a Business has a Gross Receipt of \$700,000 and is a Category 3 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$400 ([\$700,000-\$500,000] x .002) for a total of \$450 in Business Tax.

(A) Contractors: every person, firm, or corporation conducting, managing, or carrying on the Business of contractor, subcontractor, or builder; or engaging in the construction or repair of any buildings; or engaged in any engineering, construction, operating, or advertising as such, or representing himself as such, and regularly employing help for building construction, sewer construction, plumbing construction or general construction.

(B) “Services” means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the

Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter, or section of this chapter, and shall include those professions that may require governmental certification or licensure, but not be limited to the services rendered by a person engaged in the practice or profession such as hairstylist, beautician or cosmetologist, aesthetician, or art instructor.

(4) CATEGORY 4: Professionals and Rental Units (Commercial and Residential) (0.003 X Gross Receipts in excess of the Base Gross Receipt):

For example, if a Business has a Gross Receipt of \$700,000 and is a Category 4 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$600 ($[\$700,000 - \$500,000] \times .003$) for a total of \$650 in Business Tax.

(A) “Professional services” means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter or section of this chapter, and shall include those professions generally requiring governmental certification or a professional degree, but not be limited to the services rendered by a person engaged in the practice or profession of law, medicine, surgery, dentistry, ophthalmologist, optometry, chiropractic, osteopathy, chiropody, dental technician, laboratory technician, physical therapist, mortician, undertaker, psychologist, psychotherapy, radiologist, speech therapist, veterinary, licensed financial planner, licensed investment counselor, real estate agent, real estate broker, stock/bond or security agent or broker, civil, mechanical, electrical, industrial, or other class of engineer, surveyor, geologist, appraiser, architect, accountant, real estate management, property management, income tax preparers, bookkeepers, income tax consultants, developer, or marriage counselors.

(B) Any Business, individual, or entity that leases, rents, or otherwise provides property to another individual or entity for compensation.



Creating More Equitable Business Taxes



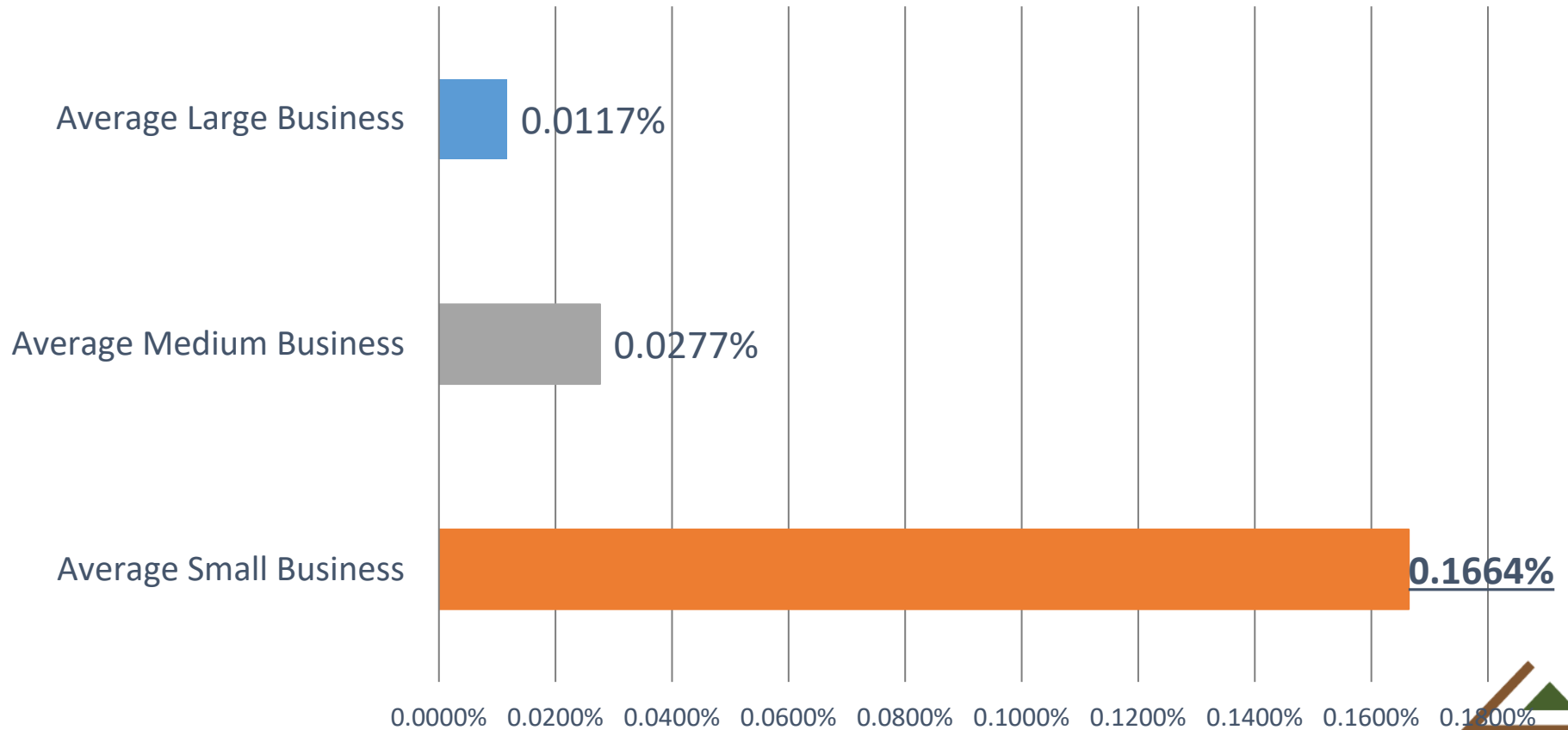
July 12th, 2022

BUSINESS TAXES BALLOT MEASURE

- Alternatives for threshold of Gross Receipts for tax break
- Next Steps

BUSINESS TAXES AVERAGE EFFECTIVE TAX RATE PAID

Average Current City Effective Tax Rates



Think Inside the Triangle™

BUSINESS TAXES AVERAGE EFFECTIVE TAX RATE PAID

City Name	Population	Businesses	Tax Type	Est. Revenue	Last Ord. Revision
Modesto	214,221	7,750	Gross Receipts	\$14,068,205	1997
Stockton	307,000	15,111	Gross Receipts	\$13,215,000	2005
Fremont	237,807	8,553	Gross Receipts	\$11,700,000	2016
San Leandro	90,553	9,900	Employees / Units	\$7,191,859	1995
Livermore	86,493	8,601	Gross Receipts /Gross Expense	\$6,933,658	2018
Pleasanton	82,372	9,800	Gross Receipts	\$4,422,151	2017
Concord	129,688	9,447	Gross Receipts / Employees	\$4,015,577	2017
Hayward	159,620	9,051	Gross Receipts / Employees / Sqft	\$2,978,708	1978
Tracy	91,812	4,861	Employees	\$873,373	2002
Manteca	81,592	3,779	Flat Rate	\$718,836	1990
Brentwood	63,800	4,840	Gross Receipts	\$718,700	2016
Lathrop	23,284	1,391	Flat	\$189,242	2002
Oakley	42,129	1,200	Gross Receipts	\$159,586	2018





Think Inside the Triangle™

Business Taxes Structure

- The proposed Business Taxes structure is a progressive tax based on four tax rates on gross receipts by business categories

Business Rate Categories	Minimum Fee	Proposed Gross Receipts Rate
GENERAL BUSINESS	\$50 Flat Rate Per Business (first \$200,000 of GR)	0.001 X Gross
MANUFACTURING, WAREHOUSING, WHOLESALING		0.0015 X Gross
CONTRACTOR		0.002 X Gross
SERVICE		0.002 X Gross
PROFESSIONALS		0.003 X Gross
RENTAL (COMMERCIAL)		0.003 X Gross
RENTAL (RESIDENTIAL)		0.003 X Gross



Think Inside the Triangle™

Developing the Business Taxes Structure

- The Ad-Hoc Committee desired a tax break for small businesses and considered three initial tax breaks to provide
 - Flat rate of \$25 for first \$50,000 in gross receipts
 - Most common tax break in cities with similar business taxes structure
 - Flat rate of \$100 for first \$100,000 in gross receipts
 - Flat rate of \$50 for first \$200,000 in gross receipts
 - Final recommendation following input from small business discussions

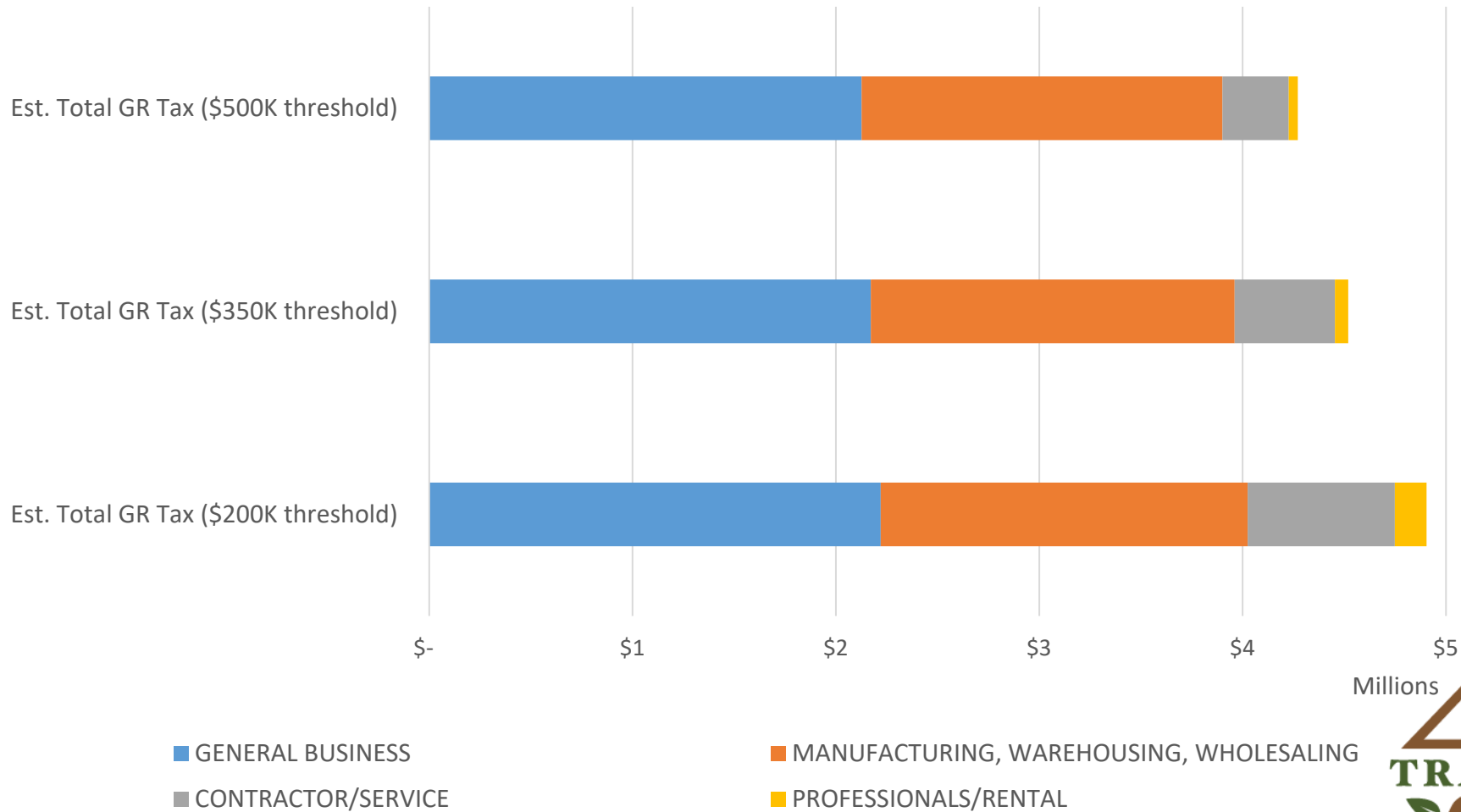
Three (3) Alternatives for

- During the July 5, 2022 Special Meeting, the City Council directed staff to return with three alternatives to the gross receipts threshold for the base rate
 - Alternative 1: Flat rate of \$50 for first \$200,000 in gross receipts
 - Alternative 2: Flat rate of \$50 for first \$350,000 in gross receipts
 - Alternative 3: Flat rate of \$50 for first \$500,000 in gross receipts

Alternatives for Threshold of Gross Receipts for Base Tax

Business Rate Categories	Proposed Rate	Total Businesses	Est. Total GR Tax (\$200k threshold)	Est. Total GR Tax (\$350k threshold)	Est. Total GR Tax (\$500k threshold)
GENERAL BUSINESS	0.001	693	\$ 2,220,579	\$ 2,171,882	\$ 2,126,506
MANUFACTURING, WAREHOUSING, WHOLESALE	0.0015	219	\$ 1,803,999	\$ 1,789,017	\$ 1,774,377
CONTRACTOR/SERVICE	0.002	3,202	\$ 723,878	\$ 493,287	\$ 325,896
PROFESSIONALS/RENTAL	0.003	625	\$ 155,971	\$ 65,420	\$ 44,532
Totals		4,739	\$ 4,904,426	\$ 4,519,606	\$ 4,271,312

Alternatives for Threshold of Gross Receipts for Base Tax



NEXT STEPS





Think Inside the Triangle™

Next Steps

- Staff has prepared three proposed ballot measures, ballot questions, and related resolutions for the November election for the City Council's consideration.
- They each reflect one of the three options the Council requested for the tax structure to reflect a base rate
- The City Council should discuss the three proposed business taxes structures and direct staff as to which ballot measure, if any, they want to go to the voters.

RESOLUTION 1

Business Taxes including a flat rate of \$50 for the first \$200,000

In accordance with State law, the proposed amendment will be presented as a ballot question. Specifically, the proposed approves the following ballot label for the proposed General Tax, to be submitted for a “Yes” or “No” vote:

To ensure large businesses pay a proportionate share and provide funding for City services such as: repairing potholes/streets; keeping public areas healthy/safe/clean; maintaining neighborhood police patrols/9-1-1 emergency response/fire protection; supporting our economy/general government use, shall the ordinance to update the City of Tracy business taxes be adopted with typical rates between 0.1% and 0.3% of gross receipts, as described in the ordinance, providing an additional \$4,000,000 annually, until ended by voters?

RESOLUTION 2

Business Taxes including a flat rate of \$50 for the first \$350,000

In accordance with State law, the proposed amendment will be presented as a ballot question. Specifically, the proposed approves the following ballot label for the proposed General Tax, to be submitted for a “Yes” or “No” vote:

To ensure large businesses pay a proportionate share and provide funding for City services such as: repairing potholes/streets; keeping public areas healthy/safe/clean; maintaining neighborhood police patrols/9-1-1 emergency response/fire protection; supporting our economy/general government use, shall the ordinance to update the City of Tracy business taxes be adopted with typical rates between 0.1% and 0.3% of gross receipts, as described in the ordinance, providing an additional \$3,500,000 annually, until ended by voters?

RESOLUTION 3

Business Taxes including a flat rate of \$50 for the first \$500,000

In accordance with State law, the proposed amendment will be presented as a ballot question. Specifically, the proposed approves the following ballot label for the proposed General Tax, to be submitted for a “Yes” or “No” vote:

To ensure large businesses pay a proportionate share and provide funding for City services such as: repairing potholes/streets; keeping public areas healthy/safe/clean; maintaining neighborhood police patrols/9-1-1 emergency response/fire protection; supporting our economy/general government use, shall the ordinance to update the City of Tracy business taxes be adopted with typical rates between 0.1% and 0.3% of gross receipts, as described in the ordinance, providing an additional \$3,200,000 annually, until ended by voters?

NEXT STEPS

- Authorize the Submission of an argument on behalf of the City Council with designated author(s) and authorizes the City Clerk to allow for the submission of arguments for and against, as well as rebuttals, regarding the measure
 - Designate, by motion, an author of the Council's argument for the measure.
- Directs the City Attorney to prepare an impartial analysis of the ballot measure.



QUESTIONS?



CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

1) ORDERING THE CITY CLERK TO SUBMIT TO THE CITY OF TRACY VOTERS AT THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION, A BALLOT MEASURE REPEALING AND REPLACING, IN ITS ENTIRETY, CHAPTER 6.04 (BUSINESS TAXES) OF THE TRACY MUNICIPAL CODE, AND 2) AUTHORIZING THE SUBMISSION OF AN ARGUMENT ON BEHALF OF THE CITY COUNCIL WITH DESIGNATED AUTHOR(S), AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS, OF THE BALLOT MEASURE ON THE NOVEMBER 8, 2022 GENERAL ELECTION BALLOT

WHEREAS, Chapter 6.04 of the Tracy Municipal Code contains the City of Tracy's (City) Business Taxes structure (Business Taxes Structure), which applies to all persons engaged in business activities in the City of Tracy (City); and

WHEREAS, The City's Business Taxes Structure has not been critically re-examined in decades; and

WHEREAS, The City's current Business Taxes Structure imposes a disproportionate burden on small businesses, as it is based on the total employee count instead of gross receipts generated by the businesses; and

WHEREAS, Due to this flat tax structure and reliance on the total employee count, large employers in the City, such as warehouse businesses and big corporations, are currently not paying their proportionate share of tax relative to their gross receipts; and

WHEREAS, Small, locally owned businesses in the City are currently paying a higher effective rate compared to larger businesses who are currently paying far less than their respective "fair share" relative to the gross receipts generated by such businesses; and

WHEREAS, An alternative to the flat tax is a progressive gross receipts tax, in which larger businesses with higher gross receipts pay more than smaller businesses with less gross receipts; and

WHEREAS, A progressive tax structure would create a better business environment for small businesses and provide additional funding for City services; and

WHEREAS, In a progressive system, every business pays their fair and proportional share into the City's General Fund and is aligned with the nation's progressive income tax structure; and

WHEREAS, Neighboring cities, including Stockton, Modesto, Walnut Creek, San Jose and San Francisco, have adopted a progressive business tax structure that imposes higher rates on businesses that earn more gross receipts; and

WHEREAS, The City seeks to maintain quality of life while not taxing homeowners living in the City or burdening small businesses; and

WHEREAS, The proposed amended Business Taxes measure is not a license to operate within the City, and each business must obtain a "Business Tax" Certificate; and

WHEREAS, The changes suggested to the Business Taxes Structure do not entitle the holder of the Business Tax Certificate to conduct business before complying with all requirements of the Tracy Municipal code and other applicable laws, nor to conduct business in a zone where such a business violates the law; and

WHEREAS, In March 2020, the City Council formed an Ad-Hoc Committee of the City Council to develop policies and actions to ensure the City's long-term fiscal sustainability; and

WHEREAS, On March 9, 2021, the City Council held a fiscal sustainability workshop where they adopted the City's Guiding Budget Principles and several fiscal strategies; and

WHEREAS, The City Council directed the Ad-Hoc Committee to continue working through these strategies and to return to the City Council with further actions for consideration; and

WHEREAS, One of these strategies was to revise the City's existing Business Taxes scheme, which has not been updated for the last four decades; and

WHEREAS, During the March 22, 2022, City Council workshop, staff presented the General Fund's ten-year forecast that discussed the impacts of the potential loss of Sales Tax revenues and what an increase from a revision to the Business Taxes revenue would look like for the City; and

WHEREAS, On March 22, 2022, with the recommendation of the Ad-Hoc Committee, the City Council directed staff to proceed with the documents required to place a general tax measure on the ballot for the General Municipal Election on November 8, 2022, and

WHEREAS, Over the past four months, the City has met with the Chamber of Commerce, the Tracy City Center Association (TCCA), and hosted four separate meetings for the City's business community to discuss how to make the City's Business Taxes Structure more equitable by switching to a gross receipts tax; and

WHEREAS, The Ad-Hoc Committee initially explored options for the gross receipts tax to begin after the first \$100,000 in gross revenue with a flat fee of \$100; and

WHEREAS, The small business community's feedback influenced the final recommendation, which reflects a base fee of \$50 for the first \$200,000 in gross receipts; and

WHEREAS, Based on the recommendations of the business community and the Ad-Hoc Committee, staff has prepared a proposed ballot measure asking the voters to repeal and replace, in its entirety, Chapter 6.04 (Business Taxes) of the Tracy Municipal Code in the form

attached hereto as **Exhibit A** and incorporated herein by reference (Ballot Measure) for the City Council's consideration; and

WHEREAS, if approved by the voters, the Ballot Measure would impose a general tax on businesses engaged in commercial activity in the City (General Tax); and

WHEREAS, If the proposed Ballot Measure is approved by the voters, the amended Business Taxes Structure of the City would add resources to the general-purpose fund while also supporting small businesses by having a tax break on the first \$200,000 in gross receipts; and

WHEREAS, Revenues collected from the Ballot Measure would be for general revenue purposes and would go into the City's General Fund and be used for any government purpose; and

WHEREAS, It is estimated that the proposed revisions to the Business Taxes Structure will generate approximately \$5 million in annual tax revenue for the City's General Fund; and

WHEREAS, Updating the City's Business Taxes Structure would ensure that larger businesses relative to gross receipts pay their proportionate share of taxes while reducing the impact on small businesses; and

WHEREAS, If approved, the Ballot Measure would generate additional revenue that also would allow the City to: maintain and even improve City streets, roads, parks, community facilities, and economic development; maintain and expand after-school programs, anti-gang activities, and recreation programs that keep young people off the streets, out of trouble and away from drugs and gangs; and help maintain rapid emergency and medical response times for police and fire by ensuring adequately staffed and trained police officers and firefighters; and

WHEREAS, Pursuant to Section 9222 of the California Elections Code, the City Council is authorized to place measures on the ballot to be considered at a general municipal election; and

WHEREAS, Article XIII C, section 2(b) of the California Constitution requires that any General Tax for unrestricted general revenue purposes must be submitted to and approved by a majority vote of the voters voting on the issue of imposing any general tax; and

WHEREAS, At its June 24, 2022 meeting, the City Council adopted a Resolution (Resolution No 2022-083) calling for and giving notice of a General Municipal Election to be held on November 8, 2022, and requesting that the Board of Supervisors of the County of San Joaquin consolidate said election with the Statewide General Election to be held that day along with other requisite actions; and

WHEREAS, The California Elections Code requires ballot measures to pose a specific question for the voters' consideration; and

WHEREAS, Based upon analysis and voter polling, staff proposes that the ballot question be, "To ensure large businesses pay a proportionate share and provide funding for City services such as: repairing potholes/streets; keeping public areas healthy/safe/clean; maintaining neighborhood police patrols/9-1-1 emergency response/fire protection; supporting our economy/general government use, shall the ordinance to update the City of Tracy business taxes be

adopted with typical rates between 0.1% and 0.3% of gross receipts, as described in the ordinance, providing an additional \$4,000,000 annually, until ended by voters?"; and

WHEREAS, The California Elections Code allows legislative bodies to provide for the submission of arguments for and against ballot measures and to direct their respective counsel to prepare an impartial analysis of such measures; and

WHEREAS, The City Council desires to submit the General Tax, pursuant to the Ballot Measure, to the qualified voters of the City at the next General Municipal Election to be held on Tuesday, November 8, 2022; and

WHEREAS, In accordance with the California Environmental Quality Act (CEQA) Guidelines Sections 15378 (b)(3) and (b)(4), the City finds that this action does not constitute a project under CEQA; and now, therefore, be it

RESOLVED:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct and incorporates them fully herein.

Section 2. Ballot Measure. The City Council hereby orders the City Clerk to submit to the City of Tracy Voters, at the November 8, 2022, General Municipal Election, the Ballot Measure repealing and replacing, in its entirety, Chapter 6.04 (Business Taxes) of the Tracy Municipal Code.

Section 3. Argument. The City Council hereby authorizes the submission of an argument for the Ballot Measure, on behalf of the City Council with designated author(s), which argument, in accordance with California Elections Code sections 9282 and 9283:

(a) shall not exceed 300 words in length, and shall be printed upon the same sheet of paper and mailed to each voter with the sample ballot for the election and may be signed by the authors designated by the City Council as part of the adoption of this Resolution;

(b) include, preceding the argument itself, the heading "Argument For Measure _____" and precede, which shall not be counted in the 300 word maximum (the blank spaces being filled only with the letter or number, if any, designating the measure); and

(c) be filed with the City Clerk, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, due in the office of the City Clerk by the date established by the County Registrar of Voters

Section 4. Impartial Analysis. The City Council hereby directs the City Attorney to prepare an impartial analysis of the Ballot Measure and to timely submit such analysis to the City Clerk

Section 5. Rate and Method. The type, rate, and method of collection of the General Tax are set forth in the Ballot Measure.

Section 6. Ballot Label. The City Council hereby approves the following ballot label for the proposed General Tax, to be submitted for a "Yes" or "No" vote:

To ensure large businesses pay a proportionate share and provide funding for City services such as: repairing potholes/streets; keeping public areas healthy/safe/clean; maintaining neighborhood police patrols/9-1-1 emergency response/fire protection; supporting our economy/ general government use, shall the ordinance to update the City of Tracy business taxes be adopted with typical rates between 0.1% and 0.3% of gross receipts, as described in the ordinance, providing an additional \$4,000,000 annually, until ended by voters?	YES	
	NO	

Section 7. Full Text. The full text of the Ballot Measure, which is attached as **Exhibit A**, shall be printed in the sample ballot/voter information pamphlet for the November 8, 2022 General Municipal Election.

Section 8. Approval. Pursuant to Section 2(b) of Article XIII C of the California Constitution, this measure requires approval by a majority vote (50% plus 1) of those casting ballots on the measure.

Section 9. Filing with County. The City Clerk shall file a certified copy of this Resolution, along with the argument and analysis authorized herein, with the Board of Supervisors and County Elections Department of the County of San Joaquin and to take such actions needed to comply with the California Elections Code.

Section 10. CEQA. In accordance with CEQA Guidelines Sections 15378 (b)(3) and (b)(4), the City finds that this action does not constitute a project under CEQA.

Section 11. Effective Date. This Resolution shall be effective immediately upon adoption by a majority vote of the City Council.

The foregoing Resolution was adopted by the Tracy City Council on the 12th day of July, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
 NOES: COUNCIL MEMBERS:
 ABSENT: COUNCIL MEMBERS:
 ABSTAIN: COUNCIL MEMBERS:

 Mayor

ATTEST:

 City Clerk

EXHIBIT A
ORDINANCE NO. _____

EXHIBIT A

Title 6 - BUSINESSES, PROFESSIONS AND TRADES
Chapter 6.04 BUSINESS TAXES

Chapter 6.04 BUSINESS TAXES

Sections:

- 6.04.010 Definitions.**
- 6.04.020 Revenue measure.**
- 6.04.030 Effect on other laws.**
- 6.04.040 Business tax payments required.**
- 6.04.050 Evidence of doing business.**
- 6.04.060 Constitutional apportionment.**
- 6.04.070 Exemptions.**
- 6.04.080 Posting and keeping tax certificates.**
- 6.04.090 Confidentiality and examination.**
- 6.04.100 Failure to file statements or corrected statements.**
- 6.04.110 Amount of business tax debt to city.**
- 6.04.120 Effect of convictions.**
- 6.04.130 Duty of city to issue tax certificates.**
- 6.04.140 Business taxes payable at City offices.**
- 6.04.150 Separate taxes required—Warehouses excepted.**
- 6.04.160 Tax certificate period.**
- 6.04.170 Business taxes—Payment, delinquencies, and penalties.**
- 6.04.180 Taxpayer information required.**
- 6.04.190 Subsequent tax payments.**
- 6.04.200 Extensions of filing dates—Interest charges.**
- 6.04.210 Refunds.**
- 6.04.220 Determinations of business classifications an administrative function.**
- 6.04.230 Applications for changes of business classifications.**
- 6.04.240 Appeals on decisions of business classifications.**
- 6.04.250 Rules and regulations.**
- 6.04.260 Referrals to other agencies—Prepayment of taxes.**
- 6.04.270 Enforcement.**

6.04.280 Remedies cumulative.

6.04.290 Severability.

6.04.300 Violations—Penalties.

6.04.310 Determination of tax due based on gross receipts plus annual registration tax.

Article 1. General Provisions

6.04.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

“Base Gross Receipt” means the first \$200,000 of Gross Receipt

"Business" means and includes full-time or part-time professional services and retail, wholesale, manufacturing, or other occupations, trades, or callings of any kind, whether or not carried on for profit or livelihood.

"Business tax" means the Business activity tax.

"City" means the City of Tracy, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

“Code” means the Tracy Municipal Code, as amended from time to time.

"Collector" means the Finance Director of the City or other designees charged by the Finance Director or City Manager of the City, as the case may be, with the administration of the provisions of this chapter.

“County” means the County of San Joaquin.

“Constitution” means the United States Constitution or the California Constitution, as the case may be.

"Employee" means all persons engaged in the operation or conduct of any Business, whether as a member of the owner's family, agent, manager, solicitor, and all other persons employed or working in said Business including, without limitations of the foregoing, all individuals who derive all or part of their income from commissioned sales. For purposes of computing tax based on employees, the average number of employees per year, as defined in this section, will be used.

"Fixed place of business" means premises in the City where a Business is conducted from day to day and regularly kept open for the purposes of such Business, also referred to as "regular place of business."

“Gross Receipts” means the total amount of the sale price of all sales, and/or the total amount charged or received for the performance of any act or service or employment, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act, service or employment is done as a part of or in connection with the sale of materials, goods, wares or merchandise, and when such act, service or employment occurs as a result of any activity within the City. Included in “gross receipts” shall be all receipts, cash, credits and property of any kind or nature, except as excluded in this subsection, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever as shown by either the Federal or State income tax return required to be filed by such person.

Where the Gross Receipts, as defined above, are less than the cost of operations of the Business, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations. Such cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges and other expenses.

Excluded from “gross receipts” shall be:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold;
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (d) Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;
- (e) Amounts collected for others where the Business is acting as an agent or trustee to the extent that such amounts are paid to those whom collected;
- (f) The amount of each single sale to a single customer in excess of fifty thousand dollars (\$50,000.00) where the gross profits derived therefrom does not exceed one percent (1%) of the sale price; and

The amount of gross receipts which has been the measure of a license tax paid to any other City. “Hearing officer” means an impartial person designated by the City Manager, as defined in Chapter 1.12 of the Tracy Municipal Code.

"Manufacturing" means making materials, raw or partly finished, into wares suitable for use by persons other than the manufacturer, including, but not limited to, fabrication, processing, packing, bottling, assembling, canning, compounding, and forging.

"Not-for-profit entities" means any organization that qualifies under Section 501, subsection (c) (3) of the United States Internal Revenue Code or equivalent federal statute.

"Peddler" means any person who goes from house to house or from place to place or in or along the streets of the City selling and making an immediate delivery, or offering for sale and immediate delivery, anything of value in his possession to persons other than dealers in such commodities.

"Person" means any individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, excepting: the United States of America, the State of California, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

"Solicitor" means a person engaged in soliciting, canvassing, or taking orders from house to house, or from place to place, or by telephone, or by any other means of communication for any goods, wares, or merchandise or any article to be delivered in the future, or for services to be performed in the future, or for making, manufacturing, or repairing any article whatsoever for future delivery, or for subscriptions to periodicals or tickets of admission to entertainments or memberships in any clubs.

"State" means the State of California.

"Sworn statement" means an affidavit sworn to before a person authorized to take oaths or a declaration or certification made under penalty of perjury.

"Tax Certificate" means the Business tax certificate and any other identifying decal or marker as may be required by the Collector for purposes of this Chapter 6.04.

"Tax Certificate Holder" means the Person to whom a Tax Certificate has been issued.

"Transient business" means every Business not conducted at a "fixed place of business" or at a regular place of Business, whether the person conducting such transient business is or is not a resident of the City.

"Warehousing business" means every Business conducted solely for the purpose of maintaining or renting space for the storage of any kind of property.

"Wholesale business" means every Business conducted solely for the purpose of selling goods, wares, or merchandise in wholesale lots for resale.

6.04.020 Revenue measure.

This chapter is enacted for the sole purpose of raising revenue for municipal purposes and is not intended for regulation. The issuance of any Tax certificate shall not be construed as authorizing any Business to operate without first complying with all other applicable laws and regulations.

6.04.030 Effect on other laws.

- (a) Persons required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of any similar tax for the privilege of doing such Business required by any other law of the City, the County or the State and shall remain subject to the regulatory provisions of those other laws.

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- (b) Any Person required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of such Business Tax, notwithstanding that such Business is not in compliance with zoning, health, safety, or other regulatory provisions of the Code or other State or federal law. Compliance with the provisions of this chapter shall not constitute evidence that such Business is in compliance with any other such regulations or provisions of law.

6.04.040 Required business tax payment.

- (a) It shall be unlawful for any person to transact and carry on any Business, trade, profession, calling, or occupation in the City without first having paid the Business Tax, as prescribed in this chapter or without complying with any and all applicable requirements of this chapter.
- (b) This section shall not be construed to require any Person to pay a Business Tax or to comply with any other requirement of this chapter prior to doing Business within the City if such requirements conflict with applicable statutes of the United States or of the State.

6.04.050 Evidence of doing business.

When any Person, by the use of signs, circulars, cards, telephone books, or newspapers, shall advertise, hold out, or represent that the Person is in Business in the City, or when any Person holds an active license or permit issued by a governmental agency indicating that the Person is in Business in the City, or when any Person makes a sale, takes an order, renders a commercial service, or performs any other similar act within the City, and such Person fails to deny by a sworn statement given to the Collector that the Person is not conducting a Business in the City after being requested to do so by the Collector, then such facts shall be considered prima facie evidence that the Person is conducting a Business in the City.

6.04.060 Constitutional apportionment.

- (a) None of the Business Taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the Equal Protection and Due Process Clauses of the Constitution (b) In any case where a Business Tax is believed by a Person transacting or carrying on any Business in the City to place an undue burden upon interstate commerce or be violative of such constitutional clauses, such Person may apply to the Collector for an adjustment of the tax. Such application may be made before or at the time the tax is required to be paid or within six (6) months after the payment of the prescribed Business Tax. The applicant, by sworn statement and supporting testimony, shall show the applicant's method of Business, the gross volume or estimated gross volume of such Business, and such other information as the Collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Collector shall then conduct an investigation and, after having first obtained the written approval of the City Attorney, shall fix as the Business Tax for the applicant an amount that is reasonable and nondiscriminatory or, if the Business Tax has already been paid,

shall order a refund of the amount over and above the Business Tax so fixed. Such investigation, fixing of the Business Tax, and order of refund shall be accomplished within a reasonable time upon receiving the requisite information by the City. In fixing the Business Tax, the Collector shall have the power to fix the Business Tax on any basis which will assure that the Business Tax assessed shall be uniform with that assessed on Businesses of like nature, so long as the amount assessed does not exceed the Business Tax prescribed by this chapter. If it is determined that no Business Tax is due, the applicant exempt from the Business Tax shall obtain, and the Collector shall issue, a Tax Certificate indicating such exemption from the tax.

6.04.070 Exemptions

- (a) Nothing contained in this chapter shall be deemed or construed as applying to any person transacting, engaging in, and carrying on any Business exempt by virtue of the Constitution or applicable statutes of the United States or of the State from payment of taxes prescribed herein.
- (b) Exemptions Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, except that any such Person shall be required to obtain a tax-exempt Tax Certificate:
 - (1) Not-for-profit entities, as defined in this Code;
 - (2) Banks, including national banking associations as provided by subsection 1(a) of Section 16 of Article XIII of the State Constitution; and
 - (2) Insurance companies and associations as provided by Section 14 of Article XIII of the State Constitution provided however that insurance brokers shall not be excluded under this section.
- (c) Exemptions Not Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, and shall not be required to obtain a tax-exempt Tax Certificate:
 - (1) Any delivery by a firm lacking a fixed place of Business in the City, which delivery is occasional and incidental to a Business carried on outside the City provided, however, that four (4) or more deliveries within any twelve (12) month period shall be considered proof that any further delivery is not occasional and incidental to such Business;
 - (2) Any public utility or other organization which is wholly owned and operated by a political subdivision of the State and any public district organized under the laws of the State; and
 - (3) Any vehicle which is subject to the Motor Carriers of Property Permit Fee Act (California Revenue and Taxation Code section 7231 et. al); provided, however, this exemption shall only apply to the transportation Business.
- (d) Claims for exemption. Any Person desiring to claim an exemption from the payment of a Business Tax and to have a free tax-exempt Tax Certificate issued shall make an

application therefor upon a form prescribed by the City and shall furnish such information and make such affidavits as may be required, on an annual basis. Upon the determination being made that the applicant is entitled to an exemption from the payment of the Business Tax for any reason set forth in this chapter, the City, upon the applicant complying with the provisions of this chapter or any other law of the City which may require a permit for the doing of the particular act proposed to be done, shall issue a free tax-exempt Tax Certificate to such Person, which certificate shall show upon its face that the Business is exempt from the Business Tax.

- (e) Revocation of exemptions. The City may revoke any tax-exempt Tax Certificate granted pursuant to the provisions of this chapter upon information that the Business is not entitled to the exemption as provided therein. In such revocation, the procedure to be followed and the right of appeal shall be as provided in this chapter for the determination of a disputed tax.
- (f) Sworn statements. The City may require the filing of a sworn statement from any person claiming to be excluded by the provisions of the section, which statement shall set forth all the facts upon which the exclusion is claimed.

6.04.080 Posting and keeping Tax Certificates – Record keeping.

- (a) Any Person carrying on Business at a fixed place of Business in the City shall keep the Tax Certificate posted in a conspicuous place on the premises where such Business is carried on.
- (b) Every Tax Certificate holder not having a fixed place of Business in the City shall keep the Tax Certificate upon his or her person, or if required by the Collector affixed in plain view upon any cart, vehicle, van, or other movable structure or device, at all times while transacting or carrying on the Business for which it is issued.
- (c) All Persons subject to the provisions of this chapter shall keep complete records of Business transactions, including sales, receipts, purchases, and other expenditures, and shall retain all such records for examination by the Collector. Such records shall be maintained for a period of at least three years. No Person required to keep records under this section shall refuse to allow authorized representatives of the Collector to examine said records at reasonable times and places.

6.04.090 Information confidentiality.

No statement shall be conclusive as to the matters set forth in any application filed under the provisions of this chapter and neither the filing thereof, the assessment or payment of any tax, nor the issuance of any Tax Certificate shall preclude the City from collecting by appropriate action such sum as is actually due and payable. Such statement, and each of the several items therein contained, shall be subject to audit and verification by the Finance Director, who is hereby authorized to examine, audit, and inspect such books and records of any Tax Certificate Holder or applicant for a Tax Certificate as may be necessary for the judgment of the Collector to verify or ascertain the amount of Business Tax due.

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- (a) It is unlawful for the Collector or any person having an administrative duty under the provisions of this chapter to make known in any manner whatever the Business affairs, operations, or information obtained by an investigation of records and equipment of any Person required to have a Tax Certificate, or pay a Business Tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or copy of either, or any book containing any abstract particulars thereof to be seen or examined by any person. Provided that nothing in this section shall be construed to prevent:
- (1) The disclosure to, or the examination of records and equipment by, another City official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter, or collecting taxes imposed hereunder;
 - (2) The disclosure of information to, or the examination of records by Federal or State officials, or the tax officials of another city or county, or city and county, if a reciprocal arrangement exists, or to a grand jury or court of law, upon subpoena;
 - (3) The disclosure of information and results of the examination of records of particular taxpayers, or relating to particular payers, to a court of law in a proceeding brought to determine the existence or amount of any Business Tax liability of the particular taxpayers to the City;
 - (4) The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included to the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Collector may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;
 - (5) The disclosure of the names and addresses of persons to whom Business Tax receipts have been issued, and the general type or nature of their Business;
 - (6) The disclosure by way of public meeting or otherwise of such information as may be necessary to the City Council in order to permit it to be fully advised as the facts when a taxpayer files a claim for refund of Business Taxes or submits an offer of compromise with regard to a claim asserted against him by the City for Business Taxes, or when acting upon any other matter;
 - (7) The disclosure of general statistics regarding taxes collected or Business done in the City.

6.04.100 Failure to file statements or corrected statements.

- (a) If any Person fails to file any required statement within the time prescribed, or if, after demand therefor made by the Collector, such Person fails to file a corrected statement, or

if any Person subject to the tax imposed by this chapter fails to submit the information required by the Collector necessary to determine the Business Tax due and payable, or if the Collector is not satisfied with the information supplied and the statement filed, the Collector may determine the amount of the Business Tax due from such Person by means of such information as he may be able to obtain.

- (b) If such a determination is made, the Collector shall give notice of the amount so assessed by serving such notice electronically, personally, or by depositing it in the United States Post Office, postage prepaid, addressed to the Person so assessed at his last known address.
- (c) Assessments so established shall be paid within fifteen (15) days after the mailing of such notice, subject to the provisions of section 6.04.180 of this chapter.

6.04.110 Amount of business tax debt to the city.

The amount of any Business Tax imposed by this chapter shall be deemed a debt to the City, and any Person carrying on any trade, calling, profession or occupation mentioned in this chapter without having a Tax Certificate from the City shall be liable to an action in the name of the City in any court of competent jurisdiction for the amount of the Business Tax by this chapter imposed on such trade, calling, profession, or occupation.

6.04.120 Effect of convictions.

The conviction and punishment of any Person for transacting any trade, calling, profession, or occupation without a tax shall not excuse or exempt such person from the payment of any Business Tax due or unpaid at the time of such conviction, and nothing in this chapter shall prevent a criminal prosecution for any violation of the provisions of this chapter.

6.04.130 Duty of City to issue business tax certificates.

- (a) It shall be the duty of the City to prepare and issue a Tax Certificate pursuant to the provisions of this chapter for every person liable to pay a Business Tax and to state in each Tax Certificate the period of time covered thereby; the name of the person or Business to whom issued; the Business classification to which the Tax Certificate is issued; the trade, calling, profession, or occupation to which the license certificate is issued and the location or place of Business where such trade, calling, profession, or occupation is to be carried
- (b) No Tax Certificate granted or issued under any provision of this chapter shall be in any manner transferred or assigned, nor shall such Tax Certificate authorize any Person, other than is therein mentioned or named, to not pay a Business Tax.
- (c) The City may make a charge of Ten (\$10.00) Dollars for each duplicate Tax Certificate issued to replace any Tax Certificate issued under the provisions of this chapter that has been lost or destroyed. In no case shall any mistake made by the City in stating the amount of a Business Tax prevent or prejudice the collection by the City of what shall be due from any Person carrying on a trade, calling, profession, or occupation subject to Business Tax under this chapter.

6.04.140 Business taxes payable at City offices.

All Business Taxes shall be paid in advance in lawful money of the United States to the City of Tracy, in a manner prescribed by the Collector.

6.04.150 Separate business tax certificate required - Warehouses excepted.

A separate Tax Certificate shall be obtained for each branch establishment or location. Warehouses and distributing establishments used in connection with and incidental to a Business Taxed under the provisions of this chapter shall not be deemed to be separate places of Business or branch establishments.

6.04.160 Business tax certificate period.

No Tax Certificate shall be issued for a period of more than twelve (12) months of the City's fiscal year beginning July 1 and ending June 30. Any application for a Tax Certificate received by the City mid-fiscal year will use a prospective estimate of how much the applicant would pay had they applied at the beginning of the Tax Certificate period.

6.04.170 Business taxes—Payment, delinquencies, and penalties.

- (a) All Business Taxes shall be due on the first day of July and delinquent at 5:00 p.m. on the last day of July.
- (b) For failure to pay a Business Tax when due, the Collector shall add a penalty of ten (10%) percent of such Business Tax on the first day of delinquency and shall add a further penalty of ten (10%) percent of such Business Tax on the first day of every subsequent calendar month following such first day of delinquency provided the amount of such penalties to be added shall in no event exceed fifty (50%) percent of the Business Tax due. The penalties provided in this subsection shall be assessed from the date when such deficiency was required to be paid pursuant to the provisions of this chapter.

6.04.180 Application - Initial.

- (a) Upon a Person making an application for the first Business Tax Certificate for a newly established or acquired Business, such Person shall furnish to the Collector a statement, upon a form provided by the Collector; setting forth the following information:
 - (1) The exact nature or kind of Business;
 - (2) The place where such Business is to be carried on, and if the same is not to be carried on at any permanent place of Business, the places of residence of the owners of same;
 - (3) In all cases where the amount of tax to be paid is measured by gross receipts, the application shall set forth such information as may be therein required and as may be necessary to determine the amount of the tax to be paid by the applicant;
 - (4) Any further information which the Collector may require.
- (b) If the amount of the tax to be paid by the applicant is measured by gross receipts, he or she shall estimate the gross receipts for the period covered. Such estimate, if accepted by the Collector as reasonable, shall be used in determining the amount of tax to be paid by

the applicant; provided, however, the amount of the tax so determined shall be tentative only, and such person shall, within 60 days after the expiration of the period covered, furnish the Collector with a statement, upon a form prescribed by the Collector, showing the applicant's actual gross receipts during the period covered, and the tax for such period shall be finally ascertained and paid in the manner provided by this chapter for the ascertaining and paying of such taxes, after deducting from the payment found to be due the amounts initially paid.

- (c) In all cases, the applicant shall, upon filing his or her application, pay no less than the prescribed minimum tax in advance, without being prorated, to cover the remaining portion of the current reporting period.
- (d) The Collector shall not issue to any such person another Business Tax Certificate for the same or any other Business until such Person shall have furnished to him or her a statement and paid the tax as herein required.

6.04.190 Application - Renewal.

In all cases, the applicant for the renewal of a Business Tax Certificate shall submit to the Collector for his or her guidance in ascertaining the amount of the tax to be paid by the applicant, a statement, upon a form prescribed by the Collector, setting forth such information concerning the applicant's Business during the preceding year as may be required by the Collector to enable him or her to ascertain the amount of the tax to be paid by said applicant pursuant to the provisions of this chapter. 6.04.200 Extensions of filing dates—Interest charges.

The Collector shall have the power, for good cause, to extend the time for filing any required sworn statement for a period not exceeding sixty (60) days and in such case to waive any penalty that would have otherwise accrued, except that twelve (12%) percent simple interest shall be added to any tax determined to be payable.

6.04.210 Refunds.

No refund of an overpayment of a Business Tax imposed by this chapter shall be allowed in whole or in part unless a claim for a refund is filed with the Collector within a period of one (1) years after the last day of the calendar month following the period for which the overpayment was made, and all such claims for refunds shall be filed with the Collector on forms the Collector furnishes in the manner prescribed by the Collector. Upon the filing of such a claim and when the Collector determines, in a reasonable time, that an overpayment has been made, the Collector may refund the amount overpaid.

6.04.220 Determinations of business classifications an administrative function.

The final determination of which Business or class of Business a Tax Certificate Holder or applicant for a Tax Certificate is engaged in, or about to engage in, shall be an administrative function of the City.

6.04.230 Applications for changes of business classifications.

- (a) In any case, where a Tax Certificate Holder or an applicant for a Tax Certificate believes that his or her Business is not assigned to the proper classification under this chapter because of circumstances peculiar to it, as distinguished from other Businesses of the same kind, he or she may apply to the Collector for reclassification. Such application shall contain such information as the Collector may deem necessary and require in order to determine whether the applicant's individual Business is properly classified. The Collector shall then conduct an investigation following which he or she shall assign the applicant's individual Business to the classification shown to be proper on the basis of such investigation. The proper classification is that classification which, in the opinion of the Collector, most nearly fits the applicant's Business. The reclassification shall not be retroactive but shall apply at the time of the next regularly ensuing calculation of the applicant's tax. No Business shall be classified more than once a year.
- (b) The Collector shall notify the applicant of the action taken on the application for reclassification. Such notice shall be given by serving it personally or by depositing it in the United States Post Office postage prepaid, addressed to the applicant at his or her last known address. Such applicant may, within 10 working days after the mailing or serving of such notices, make a written request to the Collector for a appeal hearing on the application's reclassification. If such a request is made within the time prescribed, the Collector shall cause the matter to be set for hearing before the City Council within 15 days. The Collector shall give the applicant at least 10 days' notice of the time and place of the hearing in the manner prescribed under section 1.12.020 for serving notice of the action taken on the application for reclassification. The City Council shall consider all evidence adduced and shall adopt a resolution reflecting its decision. The decision of the City Council shall be final.

6.04.240 Appeals on decisions of business classifications.

Any applicant or Tax Certificate Holder aggrieved by the Business classification decision of the City shall have the right of appeal to an impartial Hearing Officer as outlined by section 1.12.030 of the Code. Such appeal shall be taken by filing with the City Clerk, within fifteen (15) days after the notice of the decision of the City, a written statement setting forth the grounds for the appeal. The City Clerk shall set a time and place for a hearing on such appeal within thirty (30) days after the receipt of the appeal. Notwithstanding chapter 1.12 of the Code, the decisions and orders of the Hearing Officer shall be final and conclusive.

6.04.250 Rules and regulations.

The City Manager may promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary or desirable to aid in the enforcement of the provisions of this chapter.

6.04.260 Referrals to other agencies—Prepayment of taxes.

- (a) Referrals to other agencies. The Collector may refer to any governmental agency any statement and all other information submitted by persons subject to the provisions of this

chapter in connection with the conduct of a Business regulated or supervised or otherwise the concern of any such agency, including agencies concerned with health regulations, zoning conformance, fire safety, police considerations, or any other safeguard of the public interest. (b) Prepayment of taxes. The Collector may advise any person filing a statement in connection with the payment of a Business Tax for a new or other Business not actually in operation that such person may desire to defer the payment of the Business Tax until the person has obtained whatever approval may be required in order to transact and carry on the Business until such Business is actually in operation. If any person does, however, pay the Business Tax in advance of the commencement of the operation of the Business, but does not operate the Business because City or other governmental agency did not grant an approval which is required by regulation or law in order for such Business to be transacted and carried on, then the Business Tax shall be refunded in full, after the person has informed Collector in a timely manner, to the person having paid such tax minus the application fee as set by resolution of the City Council and revised from time to time.

6.04.270 Enforcement.

- (a) It shall be the duty of the Collector to enforce each and all of the provisions of this chapter, and the various City departments shall render such assistance in the enforcement as may from time to time be required by the Collector, City Manager, or City Council.
- (b) The Collector, in the exercise of the duties imposed upon the Collector shall examine, or cause to be examined, all places of Business in the City to ascertain whether the provisions of this chapter have been complied with.
- (c) The Collector, and each designee, and any police officer or duly authorized inspector, shall have the power and authority to enter free of charge at any reasonable time any place of Business or to question any person, which Business or person is, or there is reasonable cause to believe such Business or person may be, subject to the provision of this chapter, and demand an exhibition of proof of Business Tax payment.
- (d) The Collector's designees who have satisfactorily completed a certified course in "Powers of Arrest" may thereafter exercise the powers of arrest as specified in Section 836.5 of the California Penal Code on any person who has committed a misdemeanor or infraction in their presence which is a violation of the provisions of this chapter.

6.04.280 Remedies cumulative.

All remedies prescribed in this chapter shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

6.04.290 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

The City Council hereby declares that it would have adopted this chapter, and each section, subsection, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions be declared invalid or unconstitutional.

6.04.300 Violations—Penalties.

Any person violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring, or attempting to procure, the Business Tax certificate provided for in this chapter shall be deemed guilty of an infraction.

Article 2. Taxes

6.04.310 Determination of tax due based on gross receipts plus annual registration tax.

- (a) Every person who engages in Business within the City shall pay a Business Tax based upon Gross Receipts at the specified category rates listed in this section.
- (b) A flat rate of \$50 will be applied to the Base Gross Receipts, as defined by section 6.04.010, regardless of which category the Business falls under. If the Business makes less than the Base Gross Receipts but more than \$1, the Business will only pay \$50 in Business Tax. Any dollar amount in excess of the Base Gross Receipt, will be calculated by the rates below.

For example, if a Business has a Gross Receipt of \$300,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$200,000 [Base Gross Receipt]) + \$100 ($[\$300,000 - \$200,000] \times .001$) for a total of \$150 in Business Tax.

- (c) If a Business has no Gross Receipts, as defined in section 6.04.010, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations for such Business. The cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges, and other expenses.

- (d) Categories of Businesses:

- (1) CATEGORY 1: General retail, restaurants, hotels, and tour operators and any Business not otherwise classified ($0.001 \times$ Gross Receipts in excess of the Base Gross Receipts)

Example: If a Business has a Gross Receipt of \$400,000 and is a Category 1 Business, the total amount of tax the Business would pay would be \$50 (for the first \$200,000 [Base Gross Receipts]) + \$200 ($[\$400,000 - \$200,000] \times .001$) for a total of \$250 in Business Tax

- (A) Any establishment or Business that conducts retail (the sale of goods to ultimate consumers, usually in small quantities), or wholesale (the sale of goods in quantity, as to retailers or jobbers, for resale), or restaurant (an

establishment where meals, prepared food, and/or beverages are served to customers).

(B) "Tour operator" means a Business that provides tours in the City for Compensation.

(2) CATEGORY 2: Wholesale and Manufacturing (0.0015 X Gross Receipt in excess of the Base Gross Receipts):

Example: If a Business has a Gross Receipt of \$400,000 and is a Category 2 Business, the total amount of tax the Business would pay would be \$50 (for the first \$200,000 [Base Gross Receipts]) + \$300 $([\$400,000 - \$200,000] \times .0015)$ for a total of \$350 in Business Tax

(A) "Manufacturing" includes every person conducting or carrying on a Business consisting of manufacturing, packing, or processing any goods, wares, merchandise, or commodities at a fixed place of Business within the City or conducting or carrying on a Business of cold storage or refrigeration.

(3) CATEGORY 3: Contractors and Services (0.002 X Gross Receipt in excess of the Base Gross Receipt):

Example: If a Business has a Gross Receipt of \$400,000 and is a Category 3 Business, the total amount of tax the Business would pay would be \$50 (for the first \$200,000 [Base Gross Receipts]) + \$400 $([\$400,000 - \$200,000] \times .002)$ for a total of \$450 in Business Tax

(A) Contractors: every person, firm, or corporation conducting, managing, or carrying on the Business of contractor, subcontractor, or builder; or engaging in the construction or repair of any buildings; or engaged in any engineering, construction, operating, or advertising as such, or representing himself as such, and regularly employing help for building construction, sewer construction, plumbing construction or general construction.

(B) "Services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter, or section of this chapter, and shall include those professions that may require governmental certification or licensure, but not be limited to the services rendered by a person engaged in the practice or profession such as hairstylist, beautician or cosmetologist, aesthetician, or art instructor.

(4) CATEGORY 4: Professionals and Rental Units (Commercial and Residential) (0.003 X Gross Receipts in excess of the Base Gross Receipt):

Example: If a Business has a Gross Receipt of \$400,000 and is a Category 4 Business, the total amount of tax the Business would pay would be \$50 (for the first \$200,000 [Base Gross Receipts]) + \$600 $([\$400,000 - \$200,000] \times .003)$ for a total of \$650 in Business Tax

- (A) "Professional services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter or section of this chapter, and shall include those professions generally requiring governmental certification or a professional degree, but not be limited to the services rendered by a person engaged in the practice or profession of law, medicine, surgery, dentistry, ophthalmologist, optometry, chiropractic, osteopathy, chiropody, dental technician, laboratory technician, physical therapist, mortician, undertaker, psychologist, psychotherapy, radiologist, speech therapist, veterinary, licensed financial planner, licensed investment counselor, real estate agent, real estate broker, stock/bond or security agent or broker, civil, mechanical, electrical, industrial, or other class of engineer, surveyor, geologist, appraiser, architect, accountant, real estate management, property management, income tax preparers, bookkeepers, income tax consultants, developer, or marriage counselors.
- (B) Any Business, individual, or entity that leases, rents, or otherwise provides property to another individual or entity for compensation.

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

ORDERING THE CITY CLERK TO SUBMIT TO THE CITY OF TRACY VOTERS AT THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION, A BALLOT MEASURE REPEALING AND REPLACING, IN ITS ENTIRETY, CHAPTER 6.04 (BUSINESS TAXES) OF THE TRACY MUNICIPAL CODE, AND 2) AUTHORIZING THE SUBMISSION OF AN ARGUMENT ON BEHALF OF THE CITY COUNCIL WITH DESIGNATED AUTHOR(S), AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS, OF THE BALLOT MEASURE ON THE NOVEMBER 8, 2022 GENERAL ELECTION BALLOT

WHEREAS, Chapter 6.04 of the Tracy Municipal Code contains the City of Tracy's (City) Business Taxes structure (Business Taxes Structure), which applies to all persons engaged in business activities in the City of Tracy (City); and

WHEREAS, The City's Business Taxes Structure has not been critically re-examined in decades; and

WHEREAS, The City's current Business Taxes Structure imposes a disproportionate burden on small businesses, as it is based on the total employee count instead of gross receipts generated by the businesses; and

WHEREAS, Due to this flat tax structure and reliance on the total employee count, large employers in the City, such as warehouse businesses and big corporations, are currently not paying their proportionate share of tax relative to their gross receipts; and

WHEREAS, Small, locally owned businesses in the City are currently paying a higher effective rate compared to larger businesses who are currently paying far less than their respective "fair share" relative to the gross receipts generated by such businesses; and

WHEREAS, An alternative to the flat tax is a progressive gross receipts tax, in which larger businesses with higher gross receipts pay more than smaller businesses with less gross receipts; and

WHEREAS, A progressive tax structure would create a better business environment for small businesses and provide additional funding for City services; and

WHEREAS, In a progressive system, every business pays their fair and proportional share into the City's General Fund and is aligned with the nation's progressive income tax structure; and

WHEREAS, Neighboring cities, including Stockton, Modesto, Walnut Creek, San Jose and San Francisco, have adopted a progressive business tax structure that imposes higher rates on businesses that earn more gross receipts; and

WHEREAS, The City seeks to maintain quality of life while not taxing homeowners living in the City or burdening small businesses; and

WHEREAS, The proposed amended Business Taxes measure is not a license to operate within the City, and each business must obtain a "Business Tax" Certificate; and

WHEREAS, The changes suggested to the Business Taxes Structure do not entitle the holder of the Business Tax Certificate to conduct business before complying with all requirements of the Tracy Municipal code and other applicable laws, nor to conduct business in a zone where such a business violates the law; and

WHEREAS, In March 2020, the City Council formed an Ad-Hoc Committee of the City Council to develop policies and actions to ensure the City's long-term fiscal sustainability; and

WHEREAS, On March 9, 2021, the City Council held a fiscal sustainability workshop where they adopted the City's Guiding Budget Principles and several fiscal strategies; and

WHEREAS, The City Council directed the Ad-Hoc Committee to continue working through these strategies and to return to the City Council with further actions for consideration; and

WHEREAS, One of these strategies was to revise the City's existing Business Taxes scheme, which has not been updated for the last four decades; and

WHEREAS, During the March 22, 2022, City Council workshop, staff presented the General Fund's ten-year forecast that discussed the impacts of the potential loss of Sales Tax revenues and what an increase from a revision to the Business Taxes revenue would look like for the City; and

WHEREAS, On March 22, 2022, with the recommendation of the Ad-Hoc Committee, the City Council directed staff to proceed with the documents required to place a general tax measure on the ballot for the General Municipal Election on November 8, 2022, and

WHEREAS, Over the past four months, the City has met with the Chamber of Commerce, the Tracy City Center Association (TCCA), and hosted four separate meetings for the City's business community to discuss how to make the City's Business Taxes Structure more equitable by switching to a gross receipts tax; and

WHEREAS, The Ad-Hoc Committee initially explored options for the gross receipts tax to begin after the first \$100,000 in gross revenue with a flat fee of \$100; and

WHEREAS, The small business community's feedback influenced the final recommendation, which reflects a base fee of \$50 for the first \$350,000 in gross receipts; and

WHEREAS, Based on the recommendations of the business community and the Ad-Hoc Committee, staff has prepared a proposed ballot measure asking the voters to repeal and replace, in its entirety, Chapter 6.04 (Business Taxes) of the Tracy Municipal Code in the form,

attached hereto as **Exhibit A** and incorporated herein by reference (Ballot Measure) for the City Council's consideration; and

WHEREAS, if approved by the voters, the Ballot Measure would impose a general tax on businesses engaged in commercial activity in the City (General Tax); and

WHEREAS, If the proposed Ballot Measure is approved by the voters, the amended Business Taxes Structure of the City would add resources to the general-purpose fund while also supporting small businesses by having a tax break on the first \$350,000 in gross receipts; and

WHEREAS, Revenues collected from the Ballot Measure would be for general revenue purposes and would go into the City's General Fund and be used for any government purpose; and

WHEREAS, It is estimated that the proposed revisions to the Business Taxes Structure will generate approximately \$4.5 million in annual tax revenue for the City's General Fund; and

WHEREAS, Updating the City's Business Taxes Structure would ensure that larger businesses relative to gross receipts pay their proportionate share of taxes while reducing the impact on small businesses; and

WHEREAS, If approved, the Ballot Measure would generate additional revenue that also would allow the City to: maintain and even improve City streets, roads, parks, community facilities, and economic development; maintain and expand after-school programs, anti-gang activities, and recreation programs that keep young people off the streets, out of trouble and away from drugs and gangs; and help maintain rapid emergency and medical response times for police and fire by ensuring adequately staffed and trained police officers and firefighters; and

WHEREAS, Pursuant to Section 9222 of the California Elections Code, the City Council is authorized to place measures on the ballot to be considered at a general municipal election; and

WHEREAS, Article XIII C, section 2(b) of the California Constitution requires that any General Tax for unrestricted general revenue purposes must be submitted to and approved by a majority vote of the voters voting on the issue of imposing any general tax; and

WHEREAS, At its June 24, 2022 meeting, the City Council adopted a Resolution (Resolution No 2022-083) calling for and giving notice of a General Municipal Election to be held on November 8, 2022, and requesting that the Board of Supervisors of the County of San Joaquin consolidate said election with the Statewide General Election to be held that day along with other requisite actions; and

WHEREAS, the California Elections Code requires ballot measures to pose a specific question for the voters' consideration; and

WHEREAS, Based upon analysis and voter polling, staff proposes that the ballot question be, "To ensure large businesses pay a proportionate share and provide funding for City services such as: repairing potholes/streets; keeping public areas healthy/safe/clean; maintaining neighborhood police patrols/9-1-1 emergency response/fire protection; supporting our economy/general government use, shall the ordinance to update the City of Tracy business taxes be

adopted with typical rates between 0.1% and 0.3% of gross receipts, as described in the ordinance, providing an additional \$3,500,000 annually, until ended by voters?"; and

WHEREAS, The California Elections Code allows legislative bodies to provide for the submission of arguments for and against ballot measures and to direct their respective counsel to prepare an impartial analysis of such measures; and

WHEREAS, The City Council desires to submit the General Tax, pursuant to the Ballot Measure, to the qualified voters of the City at the next General Municipal Election to be held on Tuesday, November 8, 2022; and

WHEREAS, In accordance with the California Environmental Quality Act (CEQA) Guidelines Sections 15378 (b)(3) and (b)(4), the City finds that this action does not constitute a project under CEQA; and now, therefore, be it

RESOLVED:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct and incorporates them fully herein.

Section 2. Ballot Measure. The City Council hereby orders the City Clerk to submit to the City of Tracy Voters, at the November 8, 2022, General Municipal Election, the Ballot Measure repealing and replacing, in its entirety, Chapter 6.04 (Business Taxes) of the Tracy Municipal Code.

Section 3. Argument. The City Council hereby authorizes the submission of an argument for the Ballot Measure, on behalf of the City Council with designated author(s), which argument, in accordance with California Elections Code sections 9282 and 9283:

(a) shall not exceed 300 words in length, and shall be printed upon the same sheet of paper and mailed to each voter with the sample ballot for the election and may be signed by the authors designated by the City Council as part of the adoption of this Resolution;

(b) include, preceding the argument itself, the heading "Argument For Measure _____" and precede, which shall not be counted in the 300 word maximum (the blank spaces being filled only with the letter or number, if any, designating the measure); and

(c) be filed with the City Clerk, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, due in the office of the City Clerk by the date established by the County Registrar of Voters

Section 4. Impartial Analysis. The City Council hereby directs the City Attorney to prepare an impartial analysis of the Ballot Measure and to timely submit such analysis to the City Clerk

Section 5. Rate and Method. The type, rate, and method of collection of the General Tax are set forth in the Ballot Measure.

Section 6. Ballot Label. The City Council hereby approves the following ballot label for the proposed General Tax, to be submitted for a "Yes" or "No" vote:

To ensure large businesses pay a proportionate share and provide funding for City services such as: repairing potholes/streets; keeping public areas healthy/safe/clean; maintaining neighborhood police patrols/9-1-1 emergency response/fire protection; supporting our economy/ general government use, shall the ordinance to update the City of Tracy business taxes be adopted with typical rates between 0.1% and 0.3% of gross receipts, as described in the ordinance, providing an additional \$3,500,000 annually, until ended by voters?	YES	
	NO	

Section 7. Full Text. The full text of the Ballot Measure, which is attached as **Exhibit A**, shall be printed in the sample ballot/voter information pamphlet for the November 8, 2022 General Municipal Election.

Section 8. Approval. Pursuant to Section 2(b) of Article XIII C of the California Constitution, this measure requires approval by a majority vote (50% plus 1) of those casting ballots on the measure.

Section 9. Filing with County. The City Clerk shall file a certified copy of this Resolution, along with the argument and analysis authorized herein, with the Board of Supervisors and County Elections Department of the County of San Joaquin and to take such actions needed to comply with the California Elections Code.

Section 10. CEQA. In accordance with CEQA Guidelines Sections 15378 (b)(3) and (b)(4), the City finds that this action does not constitute a project under CEQA.

Section 11. Effective Date. This Resolution shall be effective immediately upon adoption by a majority vote of the City Council.

The foregoing Resolution was adopted by the Tracy City Council on the 12th day of July, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
 NOES: COUNCIL MEMBERS:
 ABSENT: COUNCIL MEMBERS:
 ABSTAIN: COUNCIL MEMBERS:

 Mayor

ATTEST:

 City Clerk

EXHIBIT A
ORDINANCE NO. _____

EXHIBIT A

Title 6 - BUSINESSES, PROFESSIONS AND TRADES
Chapter 6.04 BUSINESS TAXES

Chapter 6.04 BUSINESS TAXES

Sections:

- 6.04.010 Definitions.**
- 6.04.020 Revenue measure.**
- 6.04.030 Effect on other laws.**
- 6.04.040 Business tax payments required.**
- 6.04.050 Evidence of doing business.**
- 6.04.060 Constitutional apportionment.**
- 6.04.070 Exemptions.**
- 6.04.080 Posting and keeping tax certificates.**
- 6.04.090 Confidentiality and examination.**
- 6.04.100 Failure to file statements or corrected statements.**
- 6.04.110 Amount of business tax debt to city.**
- 6.04.120 Effect of convictions.**
- 6.04.130 Duty of City to issue tax certificates.**
- 6.04.140 Business taxes payable at City offices.**
- 6.04.150 Separate taxes required—Warehouses excepted.**
- 6.04.160 Tax certificate period.**
- 6.04.170 Business taxes—Payment, delinquencies, and penalties.**
- 6.04.180 Taxpayer information required.**
- 6.04.190 Subsequent tax payments.**
- 6.04.200 Extensions of filing dates—Interest charges.**
- 6.04.210 Refunds.**
- 6.04.220 Determinations of business classifications an administrative function.**
- 6.04.230 Applications for changes of business classifications.**
- 6.04.240 Appeals on decisions of business classifications.**
- 6.04.250 Rules and regulations.**
- 6.04.260 Referrals to other agencies—Prepayment of taxes.**
- 6.04.270 Enforcement.**

6.04.280 Remedies cumulative.

6.04.290 Severability.

6.04.300 Violations—Penalties.

6.04.310 Determination of tax due based on gross receipt plus annual registration.

Article 1. General Provisions

6.04.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

“Base Gross Receipt” means the first \$350,000 of Gross Receipt

"Business" means and includes full-time or part-time professional services and retail, wholesale, manufacturing, or other occupations, trades, or callings of any kind, whether or not carried on for profit or livelihood.

"Business tax" means the Business activity tax.

"City" means the City of Tracy, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

“Code” means the Tracy Municipal Code, as amended from time to time.

"Collector" means the Finance Director of the City or other designees charged by the Finance Director or City Manager of the City, as the case may be, with the administration of the provisions of this chapter.

“County” means the County of San Joaquin.

“Constitution” means the United States Constitution or the California Constitution, as the case may be.

"Employee" means all persons engaged in the operation or conduct of any Business, whether as a member of the owner's family, agent, manager, solicitor, and all other persons employed or working in said Business including, without limitations of the foregoing, all individuals who derive all or part of their income from commissioned sales. For purposes of computing tax based on employees, the average number of employees per year, as defined in this section, will be used.

"Fixed place of business" means premises in the City where a Business is conducted from day to day and regularly kept open for the purposes of such Business, also referred to as "regular place of business."

“Gross Receipts” means the total amount of the sale price of all sales, and/or the total amount charged or received for the performance of any act or service or employment, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act, service or employment is done as a part of or in connection with the sale of materials, goods, wares or merchandise, and when such act, service or employment occurs as a result of any activity within the City. Included in “gross receipts” shall be all receipts, cash, credits and property of any kind or nature, except as excluded in this subsection, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever as shown by either the Federal or State income tax return required to be filed by such person.

Where the Gross Receipts, as defined above, are less than the cost of operations of the Business, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations. Such cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges and other expenses.

Excluded from “gross receipts” shall be:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold;
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (d) Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;
- (e) Amounts collected for others where the Business is acting as an agent or trustee to the extent that such amounts are paid to those whom collected;
- (f) The amount of each single sale to a single customer in excess of fifty thousand dollars (\$50,000.00) where the gross profits derived therefrom does not exceed one percent (1%) of the sale price; and

The amount of gross receipts which has been the measure of a license tax paid to any other City. “Hearing officer” means an impartial person designated by the City Manager, as defined in Chapter 1.12 of the Tracy Municipal Code.

"Manufacturing" means making materials, raw or partly finished, into wares suitable for use by persons other than the manufacturer, including, but not limited to, fabrication, processing, packing, bottling, assembling, canning, compounding, and forging.

"Not-for-profit entities" means any organization that qualifies under Section 501, subsection (c) (3) of the United States Internal Revenue Code or equivalent federal statute.

"Peddler" means any person who goes from house to house or from place to place or in or along the streets of the City selling and making an immediate delivery, or offering for sale and immediate delivery, anything of value in his possession to persons other than dealers in such commodities.

"Person" means any individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, excepting: the United States of America, the State of California, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

"Solicitor" means a person engaged in soliciting, canvassing, or taking orders from house to house, or from place to place, or by telephone, or by any other means of communication for any goods, wares, or merchandise or any article to be delivered in the future, or for services to be performed in the future, or for making, manufacturing, or repairing any article whatsoever for future delivery, or for subscriptions to periodicals or tickets of admission to entertainments or memberships in any clubs.

"State" means the State of California.

"Sworn statement" means an affidavit sworn to before a person authorized to take oaths or a declaration or certification made under penalty of perjury.

"Tax Certificate" means the Business tax certificate and any other identifying decal or marker as may be required by the Collector for purposes of this Chapter 6.04.

"Tax Certificate Holder" means the Person to whom a Tax Certificate has been issued.

"Transient business" means every Business not conducted at a "fixed place of business" or at a regular place of Business, whether the person conducting such transient business is or is not a resident of the City.

"Warehousing business" means every Business conducted solely for the purpose of maintaining or renting space for the storage of any kind of property.

"Wholesale business" means every Business conducted solely for the purpose of selling goods, wares, or merchandise in wholesale lots for resale.

6.04.020 Revenue measure.

This chapter is enacted for the sole purpose of raising revenue for municipal purposes and is not intended for regulation. The issuance of any Tax certificate shall not be construed as authorizing any Business to operate without first complying with all other applicable laws and regulations.

6.04.030 Effect on other laws.

- (a) Persons required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of any similar tax for the privilege of doing such Business required by any other law of the City, the County or the State and shall remain subject to the regulatory provisions of those other laws.

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- (b) Any Person required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of such Business Tax, notwithstanding that such Business is not in compliance with zoning, health, safety, or other regulatory provisions of the Code or other State or federal law. Compliance with the provisions of this chapter shall not constitute evidence that such Business is in compliance with any other such regulations or provisions of law.

6.04.040 Required business tax payment.

- (a) It shall be unlawful for any person to transact and carry on any Business, trade, profession, calling, or occupation in the City without first having paid the Business Tax, as prescribed in this chapter or without complying with any and all applicable requirements of this chapter.
- (b) This section shall not be construed to require any Person to pay a Business Tax or to comply with any other requirement of this chapter prior to doing Business within the City if such requirements conflict with applicable statutes of the United States or of the State.

6.04.050 Evidence of doing business.

When any Person, by the use of signs, circulars, cards, telephone books, or newspapers, shall advertise, hold out, or represent that the Person is in Business in the City, or when any Person holds an active license or permit issued by a governmental agency indicating that the Person is in Business in the City, or when any Person makes a sale, takes an order, renders a commercial service, or performs any other similar act within the City, and such Person fails to deny by a sworn statement given to the Collector that the Person is not conducting a Business in the City after being requested to do so by the Collector, then such facts shall be considered prima facie evidence that the Person is conducting a Business in the City.

6.04.060 Constitutional apportionment.

- (a) None of the Business Taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the Equal Protection and Due Process Clauses of the Constitution
- (b) In any case where a Business Tax is believed by a Person transacting or carrying on any Business in the City to place an undue burden upon interstate commerce or be violative of such constitutional clauses, such Person may apply to the Collector for an adjustment of the tax. Such application may be made before or at the time the tax is required to be paid or within six (6) months after the payment of the prescribed Business Tax. The applicant, by sworn statement and supporting testimony, shall show the applicant's method of Business, the gross volume or estimated gross volume of such Business, and such other information as the Collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Collector shall then conduct an investigation and, after having first obtained the written approval of the City Attorney, shall fix as the Business Tax for the applicant an amount that is reasonable and nondiscriminatory or, if the Business Tax has already been paid, shall order a refund of the amount over and above the Business Tax so fixed. Such investigation, fixing of the Business Tax, and order

of refund shall be accomplished within a reasonable time upon receiving the requisite information by the City. In fixing the Business Tax, the Collector shall have the power to fix the Business Tax on any basis which will assure that the Business Tax assessed shall be uniform with that assessed on Businesses of like nature, so long as the amount assessed does not exceed the Business Tax prescribed by this chapter. If it is determined that no Business Tax is due, the applicant exempt from the Business Tax shall obtain, and the Collector shall issue, a Tax Certificate indicating such exemption from the tax.

6.04.070 Exemptions

- (a) Nothing contained in this chapter shall be deemed or construed as applying to any person transacting, engaging in, and carrying on any Business exempt by virtue of the Constitution or applicable statutes of the United States or of the State from payment of taxes prescribed herein.
 - (b) Exemptions Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, except that any such Person shall be required to obtain a tax-exempt Tax Certificate:
 - (1) Not-for-profit entities, as defined in this Code;
 - (2) Banks, including national banking associations as provided by subsection 1(a) of Section 16 of Article XIII of the State Constitution; and
 - (2) Insurance companies and associations as provided by Section 14 of Article XIII of the State Constitution provided however that insurance brokers shall not be excluded under this section.
 - (c) Exemptions Not Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, and shall not be required to obtain a tax-exempt Tax Certificate:
 - (1) Any delivery by a firm lacking a fixed place of Business in the City, which delivery is occasional and incidental to a Business carried on outside the City provided, however, that four (4) or more deliveries within any twelve (12) month period shall be considered proof that any further delivery is not occasional and incidental to such Business;
 - (2) Any public utility or other organization which is wholly owned and operated by a political subdivision of the State and any public district organized under the laws of the State; and
 - (3) Any vehicle which is subject to the Motor Carriers of Property Permit Fee Act (California Revenue and Taxation Code section 7231 et. al); provided, however, this exemption shall only apply to the transportation Business.
 - (d) Claims for exemption. Any Person desiring to claim an exemption from the payment of a Business Tax and to have a free tax-exempt Tax Certificate issued shall make an application therefor upon a form prescribed by the City and shall furnish such information and make such affidavits as may be required, on an annual basis. Upon the determination
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being made that the applicant is entitled to an exemption from the payment of the Business Tax for any reason set forth in this chapter, the City, upon the applicant complying with the provisions of this chapter or any other law of the City which may require a permit for the doing of the particular act proposed to be done, shall issue a free tax-exempt Tax Certificate to such Person, which certificate shall show upon its face that the Business is exempt from the Business Tax.

- (e) Revocation of exemptions. The City may revoke any tax-exempt Tax Certificate granted pursuant to the provisions of this chapter upon information that the Business is not entitled to the exemption as provided therein. In such revocation, the procedure to be followed and the right of appeal shall be as provided in this chapter for the determination of a disputed tax.
- (f) Sworn statements. The City may require the filing of a sworn statement from any person claiming to be excluded by the provisions of the section, which statement shall set forth all the facts upon which the exclusion is claimed.

6.04.080 Posting and keeping Tax Certificates – Record keeping.

- (a) Any Person carrying on Business at a fixed place of Business in the City shall keep the Tax Certificate posted in a conspicuous place on the premises where such Business is carried on.
- (b) Every Tax Certificate holder not having a fixed place of Business in the City shall keep the Tax Certificate upon his or her person, or if required by the Collector affixed in plain view upon any cart, vehicle, van, or other movable structure or device, at all times while transacting or carrying on the Business for which it is issued.
- (c) All Persons subject to the provisions of this chapter shall keep complete records of Business transactions, including sales, receipts, purchases, and other expenditures, and shall retain all such records for examination by the Collector. Such records shall be maintained for a period of at least three years. No Person required to keep records under this section shall refuse to allow authorized representatives of the Collector to examine said records at reasonable times and places.

6.04.090 Information confidentiality.

No statement shall be conclusive as to the matters set forth in any application filed under the provisions of this chapter and neither the filing thereof, the assessment or payment of any tax, nor the issuance of any Tax Certificate shall preclude the City from collecting by appropriate action such sum as is actually due and payable. Such statement, and each of the several items therein contained, shall be subject to audit and verification by the Finance Director, who is hereby authorized to examine, audit, and inspect such books and records of any Tax Certificate Holder or applicant for a Tax Certificate as may be necessary for the judgment of the Collector to verify or ascertain the amount of Business Tax due.

- (a) It is unlawful for the Collector or any person having an administrative duty under the provisions of this chapter to make known in any manner whatever the Business affairs,

operations, or information obtained by an investigation of records and equipment of any Person required to have a Tax Certificate, or pay a Business Tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or copy of either, or any book containing any abstract particulars thereof to be seen or examined by any person. Provided that nothing in this section shall be construed to prevent:

- (1) The disclosure to, or the examination of records and equipment by, another City official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter, or collecting taxes imposed hereunder;
- (2) The disclosure of information to, or the examination of records by Federal or State officials, or the tax officials of another city or county, or city and county, if a reciprocal arrangement exists, or to a grand jury or court of law, upon subpoena;
- (3) The disclosure of information and results of the examination of records of particular taxpayers, or relating to particular payers, to a court of law in a proceeding brought to determine the existence or amount of any Business Tax liability of the particular taxpayers to the City;
- (4) The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included to the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Collector may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;
- (5) The disclosure of the names and addresses of persons to whom Business Tax receipts have been issued, and the general type or nature of their Business;
- (6) The disclosure by way of public meeting or otherwise of such information as may be necessary to the City Council in order to permit it to be fully advised as the facts when a taxpayer files a claim for refund of Business Taxes or submits an offer of compromise with regard to a claim asserted against him by the City for Business Taxes, or when acting upon any other matter;
- (7) The disclosure of general statistics regarding taxes collected or Business done in the City.

6.04.100 Failure to file statements or corrected statements.

- (a) If any Person fails to file any required statement within the time prescribed, or if, after demand therefor made by the Collector, such Person fails to file a corrected statement, or if any Person subject to the tax imposed by this chapter fails to submit the information required by the Collector necessary to determine the Business Tax due and payable, or if

the Collector is not satisfied with the information supplied and the statement filed, the Collector may determine the amount of the Business Tax due from such Person by means of such information as he may be able to obtain.

- (b) If such a determination is made, the Collector shall give notice of the amount so assessed by serving such notice electronically, personally, or by depositing it in the United States Post Office, postage prepaid, addressed to the Person so assessed at his last known address.
- (c) Assessments so established shall be paid within fifteen (15) days after the mailing of such notice, subject to the provisions of section 6.04.180 of this chapter.

6.04.110 Amount of business tax debt to the city.

The amount of any Business Tax imposed by this chapter shall be deemed a debt to the City, and any Person carrying on any trade, calling, profession or occupation mentioned in this chapter without having a Tax Certificate from the City shall be liable to an action in the name of the City in any court of competent jurisdiction for the amount of the Business Tax by this chapter imposed on such trade, calling, profession, or occupation.

6.04.120 Effect of convictions.

The conviction and punishment of any Person for transacting any trade, calling, profession, or occupation without a tax shall not excuse or exempt such person from the payment of any Business Tax due or unpaid at the time of such conviction, and nothing in this chapter shall prevent a criminal prosecution for any violation of the provisions of this chapter.

6.04.130 Duty of City to issue business tax certificates.

- (a) It shall be the duty of the City to prepare and issue a Tax Certificate pursuant to the provisions of this chapter for every person liable to pay a Business Tax and to state in each Tax Certificate the period of time covered thereby; the name of the person or Business to whom issued; the Business classification to which the Tax Certificate is issued; the trade, calling, profession, or occupation to which the license certificate is issued and the location or place of Business where such trade, calling, profession, or occupation is to be carried(b)
 - No Tax Certificate granted or issued under any provision of this chapter shall be in any manner transferred or assigned, nor shall such Tax Certificate authorize any Person, other than is therein mentioned or named, to not pay a Business Tax.
- (c) The City may make a charge of Ten (\$10.00) Dollars for each duplicate Tax Certificate issued to replace any Tax Certificate issued under the provisions of this chapter that has been lost or destroyed. In no case shall any mistake made by the City in stating the amount of a Business Tax prevent or prejudice the collection by the City of what shall be due from any Person carrying on a trade, calling, profession, or occupation subject to Business Tax under this chapter.

6.04.140 Business taxes payable at City offices.

All Business Taxes shall be paid in advance in lawful money of the United States to the City of Tracy, in a manner prescribed by the Collector.

6.04.150 Separate business tax certificate required—Warehouses excepted.

A separate Tax Certificate shall be obtained for each branch establishment or location. Warehouses and distributing establishments used in connection with and incidental to a Business Taxed under the provisions of this chapter shall not be deemed to be separate places of Business or branch establishments.

6.04.160 Business tax certificate period.

No Tax Certificate shall be issued for a period of more than twelve (12) months of the City's fiscal year beginning July 1 and ending June 30. Any application for a Tax Certificate received by the City mid-fiscal year will use a prospective estimate of how much the applicant would pay had they applied at the beginning of the Tax Certificate period.

6.04.170 Business taxes—Payment, delinquencies, and penalties.

- (a) All Business Taxes shall be due on the first day of July and delinquent at 5:00 p.m. on the last day of July.
- (b) For failure to pay a Business Tax when due, the Collector shall add a penalty of ten (10%) percent of such Business Tax on the first day of delinquency and shall add a further penalty of ten (10%) percent of such Business Tax on the first day of every subsequent calendar month following such first day of delinquency provided the amount of such penalties to be added shall in no event exceed fifty (50%) percent of the Business Tax due. The penalties provided in this subsection shall be assessed from the date when such deficiency was required to be paid pursuant to the provisions of this chapter.

6.04.180 Application - Initial.

- (a) Upon a Person making an application for the first Business Tax Certificate for a newly established or acquired Business, such Person shall furnish to the Collector a statement, upon a form provided by the Collector; setting forth the following information:
 - (1) The exact nature or kind of Business;
 - (2) The place where such Business is to be carried on, and if the same is not to be carried on at any permanent place of Business, the places of residence of the owners of same;
 - (3) In all cases where the amount of tax to be paid is measured by gross receipts, the application shall set forth such information as may be therein required and as may be necessary to determine the amount of the tax to be paid by the applicant;
 - (4) Any further information which the Collector may require.
 - (b) If the amount of the tax to be paid by the applicant is measured by gross receipts, he or she shall estimate the gross receipts for the period covered. Such estimate, if accepted by
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the Collector as reasonable, shall be used in determining the amount of tax to be paid by the applicant; provided, however, the amount of the tax so determined shall be tentative only, and such person shall, within 60 days after the expiration of the period covered, furnish the Collector with a statement, upon a form prescribed by the Collector, showing the applicant's actual gross receipts during the period covered, and the tax for such period shall be finally ascertained and paid in the manner provided by this chapter for the ascertaining and paying of such taxes, after deducting from the payment found to be due the amounts initially paid.

- (c) In all cases, the applicant shall, upon filing his or her application, pay no less than the prescribed minimum tax in advance, without being prorated, to cover the remaining portion of the current reporting period.
- (d) The Collector shall not issue to any such person another Business Tax Certificate for the same or any other Business until such Person shall have furnished to him or her a statement and paid the tax as herein required.

6.04.190 Application - Renewal.

In all cases, the applicant for the renewal of a Business Tax Certificate shall submit to the Collector for his or her guidance in ascertaining the amount of the tax to be paid by the applicant, a statement, upon a form prescribed by the Collector, setting forth such information concerning the applicant's Business during the preceding year as may be required by the Collector to enable him or her to ascertain the amount of the tax to be paid by said applicant pursuant to the provisions of this chapter.

6.04.200 Extensions of filing dates—Interest charges.

The Collector shall have the power, for good cause, to extend the time for filing any required sworn statement for a period not exceeding sixty (60) days and in such case to waive any penalty that would have otherwise accrued, except that twelve (12%) percent simple interest shall be added to any tax determined to be payable.

6.04.210 Refunds.

No refund of an overpayment of a Business Tax imposed by this chapter shall be allowed in whole or in part unless a claim for a refund is filed with the Collector within a period of one (1) years after the last day of the calendar month following the period for which the overpayment was made, and all such claims for refunds shall be filed with the Collector on forms the Collector furnishes in the manner prescribed by the Collector. Upon the filing of such a claim and when the Collector determines, in a reasonable time, that an overpayment has been made, the Collector may refund the amount overpaid.

6.04.220 Determinations of business classifications an administrative function.

The final determination of which Business or class of Business a Tax Certificate Holder or applicant for a Tax Certificate is engaged in, or about to engage in, shall be an administrative function of the City.

6.04.230 Applications for changes of business classifications.

- (a) In any case, where a Tax Certificate Holder or an applicant for a Tax Certificate believes that his or her Business is not assigned to the proper classification under this chapter because of circumstances peculiar to it, as distinguished from other Businesses of the same kind, he or she may apply to the Collector for reclassification. Such application shall contain such information as the Collector may deem necessary and require in order to determine whether the applicant's individual Business is properly classified. The Collector shall then conduct an investigation following which he or she shall assign the applicant's individual Business to the classification shown to be proper on the basis of such investigation. The proper classification is that classification which, in the opinion of the Collector, most nearly fits the applicant's Business. The reclassification shall not be retroactive but shall apply at the time of the next regularly ensuing calculation of the applicant's tax. No Business shall be classified more than once a year.
- (b) The Collector shall notify the applicant of the action taken on the application for reclassification. Such notice shall be given by serving it personally or by depositing it in the United States Post Office postage prepaid, addressed to the applicant at his or her last known address. Such applicant may, within 10 working days after the mailing or serving of such notices, make a written request to the Collector for a appeal hearing on the application's reclassification. If such a request is made within the time prescribed, the Collector shall cause the matter to be set for hearing before the City Council within 15 days. The Collector shall give the applicant at least 10 days' notice of the time and place of the hearing in the manner prescribed under section 1.12.020 for serving notice of the action taken on the application for reclassification. The City Council shall consider all evidence adduced and shall adopt a resolution reflecting its decision. The decision of the City Council shall be final.

6.04.240 Appeals on decisions of business classifications.

Any applicant or Tax Certificate Holder aggrieved by the Business classification decision of the City shall have the right of appeal to an impartial Hearing Officer as outlined by section 1.12.030 of the Code. Such appeal shall be taken by filing with the City Clerk, within fifteen (15) days after the notice of the decision of the City, a written statement setting forth the grounds for the appeal. The City Clerk shall set a time and place for a hearing on such appeal within thirty (30) days after the receipt of the appeal. Notwithstanding chapter 1.12 of the Code, the decisions and orders of the Hearing Officer shall be final and conclusive.

6.04.250 Rules and regulations.

The City Manager may promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary or desirable to aid in the enforcement of the provisions of this chapter.

6.04.260 Referrals to other agencies—Prepayment of taxes.

- (a) Referrals to other agencies. The Collector may refer to any governmental agency any statement and all other information submitted by persons subject to the provisions of this chapter in connection with the conduct of a Business regulated or supervised or otherwise the concern of any such agency, including agencies concerned with health regulations, zoning conformance, fire safety, police considerations, or any other safeguard of the public interest. (b) Prepayment of taxes. The Collector may advise any person filing a statement in connection with the payment of a Business Tax for a new or other Business not actually in operation that such person may desire to defer the payment of the Business Tax until the person has obtained whatever approval may be required in order to transact and carry on the Business until such Business is actually in operation. If any person does, however, pay the Business Tax in advance of the commencement of the operation of the Business, but does not operate the Business because City or other governmental agency did not grant an approval which is required by regulation or law in order for such Business to be transacted and carried on, then the Business Tax shall be refunded in full, after the person has informed Collector in a timely manner, to the person having paid such tax minus the application fee as set by resolution of the City Council and revised from time to time.

6.04.270 Enforcement.

- (a) It shall be the duty of the Collector to enforce each and all of the provisions of this chapter, and the various City departments shall render such assistance in the enforcement as may from time to time be required by the Collector, City Manager, or City Council.
- (b) The Collector, in the exercise of the duties imposed upon the Collector shall examine, or cause to be examined, all places of Business in the City to ascertain whether the provisions of this chapter have been complied with.
- (c) The Collector, and each designee, and any police officer or duly authorized inspector, shall have the power and authority to enter free of charge at any reasonable time any place of Business or to question any person, which Business or person is, or there is reasonable cause to believe such Business or person may be, subject to the provision of this chapter, and demand an exhibition of proof of Business Tax payment.
- (d) The Collector's designees who have satisfactorily completed a certified course in "Powers of Arrest" may thereafter exercise the powers of arrest as specified in Section 836.5 of the California Penal Code on any person who has committed a misdemeanor or infraction in their presence which is a violation of the provisions of this chapter.

~~(Ord. 1044 § 1 (part), 2002)~~

6.04.280 Remedies cumulative.

All remedies prescribed in this chapter shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

6.04.290 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have adopted this chapter, and each section, subsection, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions be declared invalid or unconstitutional.

6.04.300 Violations—Penalties.

Any person violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring, or attempting to procure, the Business Tax certificate provided for in this chapter shall be deemed guilty of an infraction.

Article 2. Taxes

6.04.310 Determination of tax due based on gross receipts plus annual registration tax.

- (a) Every person who engages in Business within the City shall pay a Business Tax based upon Gross Receipts at the specified category rates listed in this section.
- (b) A flat rate of \$50 will be applied to the Base Gross Receipts, as defined by section 6.04.010, regardless of which category the Business falls under. If the Business makes less than the Base Gross Receipts but more than \$1, the Business will only pay \$50 in Business Tax. Any dollar amount in excess of the Base Gross Receipt, will be calculated by the rates below.
For example, if a Business has a Gross Receipt of \$500,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$150 ($[\$500,000 - \$350,000] \times .001$) for a total of \$200 in Business Tax.
- (c) If a Business has no Gross Receipts, as defined in section 6.04.010, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations for such Business. The cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges, and other expenses.
- (d) Categories of Businesses:
 - (1) CATEGORY 1: General retail, restaurants, hotels, and tour operators and any

Business not otherwise classified (0.001 X Gross Receipts in excess of the Base Gross Receipts)

For example, if a Business has a Gross Receipt of \$500,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$150 ($[\$500,000 - \$350,000] \times .001$) for a total of \$200 in Business Tax.

(A) Any establishment or Business that conducts retail (the sale of goods to ultimate consumers, usually in small quantities), or wholesale (the sale of goods in quantity, as to retailers or jobbers, for resale), or restaurant (an establishment where meals, prepared food, and/or beverages are served to customers).

(B) "Tour operator" means a Business that provides tours in the City for Compensation.

(2) CATEGORY 2: Wholesale and Manufacturing (0.0015 X Gross Receipt in excess of the Base Gross Receipts):

For example, if a Business has a Gross Receipt of \$500,000 and is a Category 2 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$225 ($[\$500,000 - \$350,000] \times .0015$) for a total of \$275 in Business Tax.

(A) "Manufacturing" includes every person conducting or carrying on a Business consisting of manufacturing, packing, or processing any goods, wares, merchandise, or commodities at a fixed place of Business within the City or conducting or carrying on a Business of cold storage or refrigeration.

(3) CATEGORY 3: Contractors and Services (0.002 X Gross Receipt in excess of the Base Gross Receipt):

For example, if a Business has a Gross Receipt of \$500,000 and is a Category 3 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$300 ($[\$500,000 - \$350,000] \times .002$) for a total of \$350 in Business Tax.

(A) Contractors: every person, firm, or corporation conducting, managing, or carrying on the Business of contractor, subcontractor, or builder; or engaging in the construction or repair of any buildings; or engaged in any engineering, construction, operating, or advertising as such, or representing himself as such, and regularly employing help for building construction, sewer construction, plumbing construction or general construction.

(B) "Services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part,

chapter, or section of this chapter, and shall include those professions that may require governmental certification or licensure, but not be limited to the services rendered by a person engaged in the practice or profession such as hairstylist, beautician or cosmetologist, aesthetician, or art instructor.

(4) CATEGORY 4: Professionals and Rental Units (Commercial and Residential) (0.003 X Gross Receipts in excess of the Base Gross Receipt):

For example, if a Business has a Gross Receipt of \$500,000 and is a Category 4 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$350,000 [Base Gross Receipt]) + \$450 ($[\$500,000 - \$350,000] \times .003$) for a total of \$500 in Business Tax.

(A) "Professional services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter or section of this chapter, and shall include those professions generally requiring governmental certification or a professional degree, but not be limited to the services rendered by a person engaged in the practice or profession of law, medicine, surgery, dentistry, ophthalmologist, optometry, chiropractic, osteopathy, chiropody, dental technician, laboratory technician, physical therapist, mortician, undertaker, psychologist, psychotherapy, radiologist, speech therapist, veterinary, licensed financial planner, licensed investment counselor, real estate agent, real estate broker, stock/bond or security agent or broker, civil, mechanical, electrical, industrial, or other class of engineer, surveyor, geologist, appraiser, architect, accountant, real estate management, property management, income tax preparers, bookkeepers, income tax consultants, developer, or marriage counselors.

(B) Any Business, individual, or entity that leases, rents, or otherwise provides property to another individual or entity for compensation.

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

ORDERING THE CITY CLERK TO SUBMIT TO THE CITY OF TRACY VOTERS AT THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION, A BALLOT MEASURE REPEALING AND REPLACING, IN ITS ENTIRETY, CHAPTER 6.04 (BUSINESS TAXES) OF THE TRACY MUNICIPAL CODE, AND 2) AUTHORIZING THE SUBMISSION OF AN ARGUMENT ON BEHALF OF THE CITY COUNCIL WITH DESIGNATED AUTHOR(S), AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS, OF THE BALLOT MEASURE ON THE NOVEMBER 8, 2022 GENERAL ELECTION BALLOT

WHEREAS, Chapter 6.04 of the Tracy Municipal Code contains the City of Tracy's (City) Business Taxes structure (Business Taxes Structure), which applies to all persons engaged in business activities in the City of Tracy (City); and

WHEREAS, The City's Business Taxes Structure has not been critically re-examined in decades; and

WHEREAS, The City's current Business Taxes Structure imposes a disproportionate burden on small businesses, as it is based on the total employee count instead of gross receipts generated by the businesses; and

WHEREAS, Due to this flat tax structure and reliance on the total employee count, large employers in the City, such as warehouse businesses and big corporations, are currently not paying their proportionate share of tax relative to their gross receipts; and

WHEREAS, Small, locally owned businesses in the City are currently paying a higher effective rate compared to larger businesses who are currently paying far less than their respective "fair share" relative to the gross receipts generated by such businesses; and

WHEREAS, An alternative to the flat tax is a progressive gross receipts tax, in which larger businesses with higher gross receipts pay more than smaller businesses with less gross receipts; and

WHEREAS, A progressive tax structure would create a better business environment for small businesses and provide additional funding for City services; and

WHEREAS, In a progressive system, every business pays their fair and proportional share into the City's General Fund and is aligned with the nation's progressive income tax structure; and

WHEREAS, Neighboring cities, including Stockton, Modesto, Walnut Creek, San Jose and San Francisco, have adopted a progressive business tax structure that imposes higher rates on businesses that earn more gross receipts; and

WHEREAS, The City seeks to maintain quality of life while not taxing homeowners living in the City or burdening small businesses; and

WHEREAS, The proposed amended Business Taxes measure is not a license to operate within the City, and each business must obtain a "Business Tax" Certificate; and

WHEREAS, The changes suggested to the Business Taxes Structure do not entitle the holder of the Business Tax Certificate to conduct business before complying with all requirements of the Tracy Municipal code and other applicable laws, nor to conduct business in a zone where such a business violates the law; and

WHEREAS, In March 2020, the City Council formed an Ad-Hoc Committee of the City Council to develop policies and actions to ensure the City's long-term fiscal sustainability; and

WHEREAS, On March 9, 2021, the City Council held a fiscal sustainability workshop where they adopted the City's Guiding Budget Principles and several fiscal strategies; and

WHEREAS, The City Council directed the Ad-Hoc Committee to continue working through these strategies and to return to the City Council with further actions for consideration; and

WHEREAS, One of these strategies was to revise the City's existing Business Taxes scheme, which has not been updated for the last four decades; and

WHEREAS, During the March 22, 2022, City Council workshop, staff presented the General Fund's ten-year forecast that discussed the impacts of the potential loss of Sales Tax revenues and what an increase from a revision to the Business Taxes revenue would look like for the City; and

WHEREAS, On March 22, 2022, with the recommendation of the Ad-Hoc Committee, the City Council directed staff to proceed with the documents required to place a general tax measure on the ballot for the General Municipal Election on November 8, 2022, and

WHEREAS, Over the past four months, the City has met with the Chamber of Commerce, the Tracy City Center Association (TCCA), and hosted four separate meetings for the City's business community to discuss how to make the City's Business Taxes Structure more equitable by switching to a gross receipts tax; and

WHEREAS, The Ad-Hoc Committee initially explored options for the gross receipts tax to begin after the first \$100,000 in gross revenue with a flat fee of \$100; and

WHEREAS, The small business community's feedback influenced the final recommendation, which reflects a base fee of \$50 for the first \$500,000 in gross receipts; and

WHEREAS, Based on the recommendations of the business community and the Ad-Hoc Committee, staff has prepared a proposed ballot measure asking the voters to repeal and replace, in its entirety, Chapter 6.04 (Business Taxes) of the Tracy Municipal Code in the form

attached hereto as **Exhibit A** and incorporated herein by reference (Ballot Measure) for the City Council's consideration; and

WHEREAS, if approved by the voters, the Ballot Measure would impose a general tax on businesses engaged in commercial activity in the City (General Tax); and

WHEREAS, If the proposed Ballot Measure is approved by the voters, the amended Business Taxes Structure of the City would add resources to the general-purpose fund while also supporting small businesses by having a tax break on the first \$500,000 in gross receipts; and

WHEREAS, Revenues collected from the Ballot Measure would be for general revenue purposes and would go into the City's General Fund and be used for any government purpose; and

WHEREAS, It is estimated that the proposed revisions to the Business Taxes Structure will generate approximately \$4.2 million in annual tax revenue for the City's General Fund; and

WHEREAS, Updating the City's Business Taxes Structure would ensure that larger businesses relative to gross receipts pay their proportionate share of taxes while reducing the impact on small businesses; and

WHEREAS, If approved, the Ballot Measure would generate additional revenue that also would allow the City to: maintain and even improve City streets, roads, parks, community facilities, and economic development; maintain and expand after-school programs, anti-gang activities, and recreation programs that keep young people off the streets, out of trouble and away from drugs and gangs; and help maintain rapid emergency and medical response times for police and fire by ensuring adequately staffed and trained police officers and firefighters; and

WHEREAS, Pursuant to Section 9222 of the California Elections Code, the City Council is authorized to place measures on the ballot to be considered at a general municipal election; and

WHEREAS, Article XIII C, section 2(b) of the California Constitution requires that any General Tax for unrestricted general revenue purposes must be submitted to and approved by a majority vote of the voters voting on the issue of imposing any general tax; and

WHEREAS, At its June 24, 2022 meeting, the City Council adopted a Resolution (Resolution No 2022-083) calling for and giving notice of a General Municipal Election to be held on November 8, 2022, and requesting that the Board of Supervisors of the County of San Joaquin consolidate said election with the Statewide General Election to be held that day along with other requisite actions; and

WHEREAS, the California Elections Code requires ballot measures to pose a specific question for the voters' consideration; and

WHEREAS, Based upon analysis and voter polling, staff proposes that the ballot question be, "To ensure large businesses pay a proportionate share and provide funding for City services such as: repairing potholes/streets; keeping public areas healthy/safe/clean; maintaining neighborhood police patrols/9-1-1 emergency response/fire protection; supporting our economy/general government use, shall the ordinance to update the City of Tracy business taxes be

adopted with typical rates between 0.1% and 0.3% of gross receipts, as described in the ordinance, providing an additional \$3,200,000 annually, until ended by voters?"; and

WHEREAS, The California Elections Code allows legislative bodies to provide for the submission of arguments for and against ballot measures and to direct their respective counsel to prepare an impartial analysis of such measures; and

WHEREAS, The City Council desires to submit the General Tax, pursuant to the Ballot Measure, to the qualified voters of the City at the next General Municipal Election to be held on Tuesday, November 8, 2022; and

WHEREAS, In accordance with the California Environmental Quality Act (CEQA) Guidelines Sections 15378 (b)(3) and (b)(4), the City finds that this action does not constitute a project under CEQA; and now, therefore, be it

RESOLVED:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct and incorporates them fully herein.

Section 2. Ballot Measure. The City Council hereby orders the City Clerk to submit to the City of Tracy Voters, at the November 8, 2022, General Municipal Election, the Ballot Measure repealing and replacing, in its entirety, Chapter 6.04 (Business Taxes) of the Tracy Municipal Code.

Section 3. Argument. The City Council hereby authorizes the submission of an argument for the Ballot Measure, on behalf of the City Council with designated author(s), which argument, in accordance with California Elections Code sections 9282 and 9283:

(a) shall not exceed 300 words in length, and shall be printed upon the same sheet of paper and mailed to each voter with the sample ballot for the election and may be signed by the authors designated by the City Council as part of the adoption of this Resolution;

(b) include, preceding the argument itself, the heading "Argument For Measure _____" and precede, which shall not be counted in the 300 word maximum (the blank spaces being filled only with the letter or number, if any, designating the measure); and

(c) be filed with the City Clerk, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, due in the office of the City Clerk by the date established by the County Registrar of Voters

Section 4. Impartial Analysis. The City Council hereby directs the City Attorney to prepare an impartial analysis of the Ballot Measure and to timely submit such analysis to the City Clerk

Section 5. Rate and Method. The type, rate, and method of collection of the General Tax are set forth in the Ballot Measure.

Section 6. Ballot Label. The City Council hereby approves the following ballot label for the proposed General Tax, to be submitted for a "Yes" or "No" vote:

To ensure large businesses pay a proportionate share and provide funding for City services such as: repairing potholes/streets; keeping public areas healthy/safe/clean; maintaining neighborhood police patrols/9-1-1 emergency response/fire protection; supporting our economy/ general government use, shall the ordinance to update the City of Tracy business taxes be adopted with typical rates between 0.1% and 0.3% of gross receipts, as described in the ordinance, providing an additional \$3,200,000 annually, until ended by voters?	YES	
	NO	

Section 7. Full Text. The full text of the Ballot Measure, which is attached as **Exhibit A**, shall be printed in the sample ballot/voter information pamphlet for the November 8, 2022 General Municipal Election.

Section 8. Approval. Pursuant to Section 2(b) of Article XIII C of the California Constitution, this measure requires approval by a majority vote (50% plus 1) of those casting ballots on the measure.

Section 9. Filing with County. The City Clerk shall file a certified copy of this Resolution, along with the argument and analysis authorized herein, with the Board of Supervisors and County Elections Department of the County of San Joaquin and to take such actions needed to comply with the California Elections Code.

Section 10. CEQA. In accordance with CEQA Guidelines Sections 15378 (b)(3) and (b)(4), the City finds that this action does not constitute a project under CEQA.

Section 11. Effective Date. This Resolution shall be effective immediately upon adoption by a majority vote of the City Council.

The foregoing Resolution was adopted by the Tracy City Council on the 12th day of July, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
 NOES: COUNCIL MEMBERS:
 ABSENT: COUNCIL MEMBERS:
 ABSTAIN: COUNCIL MEMBERS:

 Mayor

ATTEST:

 City Clerk

EXHIBIT A
ORDINANCE NO. _____

EXHIBIT A

Title 6 - BUSINESSES, PROFESSIONS AND TRADES Chapter 6.04 BUSINESS TAXES

Chapter 6.04 BUSINESS TAXES

Sections:

- 6.04.010 Definitions.**
- 6.04.020 Revenue measure.**
- 6.04.030 Effect on other laws.**
- 6.04.040 Business tax payments required.**
- 6.04.050 Evidence of doing business.**
- 6.04.060 Constitutional apportionment.**
- 6.04.070 Exemptions.**
- 6.04.080 Posting and keeping tax certificates.**
- 6.04.090 Confidentiality and examination.**
- 6.04.100 Failure to file statements or corrected statements.**
- 6.04.110 Amount of business tax debt to city.**
- 6.04.120 Effect of convictions.**
- 6.04.130 Duty of City to issue tax certificates.**
- 6.04.140 Business taxes payable at City offices.**
- 6.04.150 Separate taxes required—Warehouses excepted.**
- 6.04.160 Tax certificate period.**
- 6.04.170 Business taxes—Payment, delinquencies, and penalties.**
- 6.04.180 Taxpayer information required.**
- 6.04.190 Subsequent tax payments.**
- 6.04.200 Extensions of filing dates—Interest charges.**
- 6.04.210 Refunds.**
- 6.04.220 Determinations of business classifications an administrative function.**
- 6.04.230 Applications for changes of business classifications.**
- 6.04.240 Appeals on decisions of business classifications.**
- 6.04.250 Rules and regulations.**
- 6.04.260 Referrals to other agencies—Prepayment of taxes.**
- 6.04.270 Enforcement.**

6.04.280 Remedies cumulative.

6.04.290 Severability.

6.04.300 Violations—Penalties.

6.04.310 Determination of tax due based on gross receipt plus annual registration.

Article 1. General Provisions

6.04.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

“Base Gross Receipt” means the first \$500,000 of Gross Receipt

"Business" means and includes full-time or part-time professional services and retail, wholesale, manufacturing, or other occupations, trades, or callings of any kind, whether or not carried on for profit or livelihood.

"Business tax" means the Business activity tax.

"City" means the City of Tracy, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

“Code” means the Tracy Municipal Code, as amended from time to time.

"Collector" means the Finance Director of the City or other designees charged by the Finance Director or City Manager of the City, as the case may be, with the administration of the provisions of this chapter.

“County” means the County of San Joaquin.

“Constitution” means the United States Constitution or the California Constitution, as the case may be.

"Employee" means all persons engaged in the operation or conduct of any Business, whether as a member of the owner's family, agent, manager, solicitor, and all other persons employed or working in said Business including, without limitations of the foregoing, all individuals who derive all or part of their income from commissioned sales. For purposes of computing tax based on employees, the average number of employees per year, as defined in this section, will be used.

"Fixed place of business" means premises in the City where a Business is conducted from day to day and regularly kept open for the purposes of such Business, also referred to as "regular place of business."

“Gross Receipts” means the total amount of the sale price of all sales, and/or the total amount charged or received for the performance of any act or service or employment, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act, service or employment is done as a part of or in connection with the sale of materials, goods, wares or merchandise, and when such act, service or employment occurs as a result of any activity within the City. Included in “gross receipts” shall be all receipts, cash, credits and property of any kind or nature, except as excluded in this subsection, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever as shown by either the Federal or State income tax return required to be filed by such person.

Where the Gross Receipts, as defined above, are less than the cost of operations of the Business, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations. Such cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges and other expenses.

Excluded from “gross receipts” shall be:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold;
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (d) Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;
- (e) Amounts collected for others where the Business is acting as an agent or trustee to the extent that such amounts are paid to those whom collected;
- (f) The amount of each single sale to a single customer in excess of fifty thousand dollars (\$50,000.00) where the gross profits derived therefrom does not exceed one percent (1%) of the sale price; and

The amount of gross receipts which has been the measure of a license tax paid to any other City. “Hearing officer” means an impartial person designated by the City Manager, as defined in Chapter 1.12 of the Tracy Municipal Code.

"Manufacturing" means making materials, raw or partly finished, into wares suitable for use by persons other than the manufacturer, including, but not limited to, fabrication, processing, packing, bottling, assembling, canning, compounding, and forging.

"Not-for-profit entities" means any organization that qualifies under Section 501, subsection (c) (3) of the United States Internal Revenue Code or equivalent federal statute.

"Peddler" means any person who goes from house to house or from place to place or in or along the streets of the City selling and making an immediate delivery, or offering for sale and immediate delivery, anything of value in his possession to persons other than dealers in such commodities.

"Person" means any individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, excepting: the United States of America, the State of California, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

"Solicitor" means a person engaged in soliciting, canvassing, or taking orders from house to house, or from place to place, or by telephone, or by any other means of communication for any goods, wares, or merchandise or any article to be delivered in the future, or for services to be performed in the future, or for making, manufacturing, or repairing any article whatsoever for future delivery, or for subscriptions to periodicals or tickets of admission to entertainments or memberships in any clubs.

"State" means the State of California.

"Sworn statement" means an affidavit sworn to before a person authorized to take oaths or a declaration or certification made under penalty of perjury.

"Tax Certificate" means the Business tax certificate and any other identifying decal or marker as may be required by the Collector for purposes of this Chapter 6.04.

"Tax Certificate Holder" means the Person to whom a Tax Certificate has been issued.

"Transient business" means every Business not conducted at a "fixed place of business" or at a regular place of Business, whether the person conducting such transient business is or is not a resident of the City.

"Warehousing business" means every Business conducted solely for the purpose of maintaining or renting space for the storage of any kind of property.

"Wholesale business" means every Business conducted solely for the purpose of selling goods, wares, or merchandise in wholesale lots for resale.

6.04.020 Revenue measure.

This chapter is enacted for the sole purpose of raising revenue for municipal purposes and is not intended for regulation. The issuance of any Tax certificate shall not be construed as authorizing any Business to operate without first complying with all other applicable laws and regulations.

6.04.030 Effect on other laws.

- (a) Persons required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of any similar tax for the privilege of doing such Business required by any other law of the City, the County or the State and shall remain subject to the regulatory provisions of those other laws.

-
- (b) Any Person required to pay a Business Tax for transacting and carrying on any Business under this chapter shall not be relieved from the payment of such Business Tax, notwithstanding that such Business is not in compliance with zoning, health, safety, or other regulatory provisions of the Code or other State or federal law. Compliance with the provisions of this chapter shall not constitute evidence that such Business is in compliance with any other such regulations or provisions of law.

6.04.040 Required business tax payment.

- (a) It shall be unlawful for any person to transact and carry on any Business, trade, profession, calling, or occupation in the City without first having paid the Business Tax, as prescribed in this chapter or without complying with any and all applicable requirements of this chapter.
- (b) This section shall not be construed to require any Person to pay a Business Tax or to comply with any other requirement of this chapter prior to doing Business within the City if such requirements conflict with applicable statutes of the United States or of the State.

6.04.050 Evidence of doing business.

When any Person, by the use of signs, circulars, cards, telephone books, or newspapers, shall advertise, hold out, or represent that the Person is in Business in the City, or when any Person holds an active license or permit issued by a governmental agency indicating that the Person is in Business in the City, or when any Person makes a sale, takes an order, renders a commercial service, or performs any other similar act within the City, and such Person fails to deny by a sworn statement given to the Collector that the Person is not conducting a Business in the City after being requested to do so by the Collector, then such facts shall be considered prima facie evidence that the Person is conducting a Business in the City.

6.04.060 Constitutional apportionment.

- (a) None of the Business Taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the Equal Protection and Due Process Clauses of the Constitution
- (b) In any case where a Business Tax is believed by a Person transacting or carrying on any Business in the City to place an undue burden upon interstate commerce or be violative of such constitutional clauses, such Person may apply to the Collector for an adjustment of the tax. Such application may be made before or at the time the tax is required to be paid or within six (6) months after the payment of the prescribed Business Tax. The applicant, by sworn statement and supporting testimony, shall show the applicant's method of Business, the gross volume or estimated gross volume of such Business, and such other information as the Collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Collector shall then conduct an investigation and, after having first obtained the written approval of the City Attorney, shall fix as the Business Tax for the applicant an amount that is reasonable and nondiscriminatory or, if the Business Tax has already been paid, shall order a refund of the amount over and above the Business Tax so fixed. Such investigation, fixing of the Business Tax, and order

of refund shall be accomplished within a reasonable time upon receiving the requisite information by the City. In fixing the Business Tax, the Collector shall have the power to fix the Business Tax on any basis which will assure that the Business Tax assessed shall be uniform with that assessed on Businesses of like nature, so long as the amount assessed does not exceed the Business Tax prescribed by this chapter. If it is determined that no Business Tax is due, the applicant exempt from the Business Tax shall obtain, and the Collector shall issue, a Tax Certificate indicating such exemption from the tax.

6.04.070 Exemptions

- (a) Nothing contained in this chapter shall be deemed or construed as applying to any person transacting, engaging in, and carrying on any Business exempt by virtue of the Constitution or applicable statutes of the United States or of the State from payment of taxes prescribed herein.
- (b) Exemptions Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, except that any such Person shall be required to obtain a tax-exempt Tax Certificate:
 - (1) Not-for-profit entities, as defined in this Code;
 - (2) Banks, including national banking associations as provided by subsection 1(a) of Section 16 of Article XIII of the State Constitution; and
 - (2) Insurance companies and associations as provided by Section 14 of Article XIII of the State Constitution provided however that insurance brokers shall not be excluded under this section.
- (c) Exemptions Not Requiring tax-exempt Tax Certificates. The following Persons shall be exempted from the provisions of this chapter, and shall not be required to obtain a tax-exempt Tax Certificate:
 - (1) Any delivery by a firm lacking a fixed place of Business in the City, which delivery is occasional and incidental to a Business carried on outside the City provided, however, that four (4) or more deliveries within any twelve (12) month period shall be considered proof that any further delivery is not occasional and incidental to such Business;
 - (2) Any public utility or other organization which is wholly owned and operated by a political subdivision of the State and any public district organized under the laws of the State; and
 - (3) Any vehicle which is subject to the Motor Carriers of Property Permit Fee Act (California Revenue and Taxation Code section 7231 et. al); provided, however, this exemption shall only apply to the transportation Business.
- (d) Claims for exemption. Any Person desiring to claim an exemption from the payment of a Business Tax and to have a free tax-exempt Tax Certificate issued shall make an application therefor upon a form prescribed by the City and shall furnish such information and make such affidavits as may be required, on an annual basis. Upon the determination

being made that the applicant is entitled to an exemption from the payment of the Business Tax for any reason set forth in this chapter, the City, upon the applicant complying with the provisions of this chapter or any other law of the City which may require a permit for the doing of the particular act proposed to be done, shall issue a free tax-exempt Tax Certificate to such Person, which certificate shall show upon its face that the Business is exempt from the Business Tax.

- (e) Revocation of exemptions. The City may revoke any tax-exempt Tax Certificate granted pursuant to the provisions of this chapter upon information that the Business is not entitled to the exemption as provided therein. In such revocation, the procedure to be followed and the right of appeal shall be as provided in this chapter for the determination of a disputed tax.
- (f) Sworn statements. The City may require the filing of a sworn statement from any person claiming to be excluded by the provisions of the section, which statement shall set forth all the facts upon which the exclusion is claimed.

6.04.080 Posting and keeping Tax Certificates – Record keeping.

- (a) Any Person carrying on Business at a fixed place of Business in the City shall keep the Tax Certificate posted in a conspicuous place on the premises where such Business is carried on.
- (b) Every Tax Certificate holder not having a fixed place of Business in the City shall keep the Tax Certificate upon his or her person, or if required by the Collector affixed in plain view upon any cart, vehicle, van, or other movable structure or device, at all times while transacting or carrying on the Business for which it is issued.
- (c) All Persons subject to the provisions of this chapter shall keep complete records of Business transactions, including sales, receipts, purchases, and other expenditures, and shall retain all such records for examination by the Collector. Such records shall be maintained for a period of at least three years. No Person required to keep records under this section shall refuse to allow authorized representatives of the Collector to examine said records at reasonable times and places.

6.04.090 Information confidentiality.

No statement shall be conclusive as to the matters set forth in any application filed under the provisions of this chapter and neither the filing thereof, the assessment or payment of any tax, nor the issuance of any Tax Certificate shall preclude the City from collecting by appropriate action such sum as is actually due and payable. Such statement, and each of the several items therein contained, shall be subject to audit and verification by the Finance Director, who is hereby authorized to examine, audit, and inspect such books and records of any Tax Certificate Holder or applicant for a Tax Certificate as may be necessary for the judgment of the Collector to verify or ascertain the amount of Business Tax due.

- (a) It is unlawful for the Collector or any person having an administrative duty under the provisions of this chapter to make known in any manner whatever the Business affairs,

operations, or information obtained by an investigation of records and equipment of any Person required to have a Tax Certificate, or pay a Business Tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or copy of either, or any book containing any abstract particulars thereof to be seen or examined by any person. Provided that nothing in this section shall be construed to prevent:

- (1) The disclosure to, or the examination of records and equipment by, another City official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter, or collecting taxes imposed hereunder;
- (2) The disclosure of information to, or the examination of records by Federal or State officials, or the tax officials of another city or county, or city and county, if a reciprocal arrangement exists, or to a grand jury or court of law, upon subpoena;
- (3) The disclosure of information and results of the examination of records of particular taxpayers, or relating to particular payers, to a court of law in a proceeding brought to determine the existence or amount of any Business Tax liability of the particular taxpayers to the City;
- (4) The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included to the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Collector may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;
- (5) The disclosure of the names and addresses of persons to whom Business Tax receipts have been issued, and the general type or nature of their Business;
- (6) The disclosure by way of public meeting or otherwise of such information as may be necessary to the City Council in order to permit it to be fully advised as the facts when a taxpayer files a claim for refund of Business Taxes or submits an offer of compromise with regard to a claim asserted against him by the City for Business Taxes, or when acting upon any other matter;
- (7) The disclosure of general statistics regarding taxes collected or Business done in the City.

6.04.100 Failure to file statements or corrected statements.

- (a) If any Person fails to file any required statement within the time prescribed, or if, after demand therefor made by the Collector, such Person fails to file a corrected statement, or if any Person subject to the tax imposed by this chapter fails to submit the information required by the Collector necessary to determine the Business Tax due and payable, or if

the Collector is not satisfied with the information supplied and the statement filed, the Collector may determine the amount of the Business Tax due from such Person by means of such information as he may be able to obtain.

- (b) If such a determination is made, the Collector shall give notice of the amount so assessed by serving such notice electronically, personally, or by depositing it in the United States Post Office, postage prepaid, addressed to the Person so assessed at his last known address.
- (c) Assessments so established shall be paid within fifteen (15) days after the mailing of such notice, subject to the provisions of section 6.04.180 of this chapter.

6.04.110 Amount of business tax debt to the city.

The amount of any Business Tax imposed by this chapter shall be deemed a debt to the City, and any Person carrying on any trade, calling, profession or occupation mentioned in this chapter without having a Tax Certificate from the City shall be liable to an action in the name of the City in any court of competent jurisdiction for the amount of the Business Tax by this chapter imposed on such trade, calling, profession, or occupation.

6.04.120 Effect of convictions.

The conviction and punishment of any Person for transacting any trade, calling, profession, or occupation without a tax shall not excuse or exempt such person from the payment of any Business Tax due or unpaid at the time of such conviction, and nothing in this chapter shall prevent a criminal prosecution for any violation of the provisions of this chapter.

6.04.130 Duty of City to issue business tax certificates.

- (a) It shall be the duty of the City to prepare and issue a Tax Certificate pursuant to the provisions of this chapter for every person liable to pay a Business Tax and to state in each Tax Certificate the period of time covered thereby; the name of the person or Business to whom issued; the Business classification to which the Tax Certificate is issued; the trade, calling, profession, or occupation to which the license certificate is issued and the location or place of Business where such trade, calling, profession, or occupation is to be carried(b)
No Tax Certificate granted or issued under any provision of this chapter shall be in any manner transferred or assigned, nor shall such Tax Certificate authorize any Person, other than is therein mentioned or named, to not pay a Business Tax.
- (c) The City may make a charge of Ten (\$10.00) Dollars for each duplicate Tax Certificate issued to replace any Tax Certificate issued under the provisions of this chapter that has been lost or destroyed. In no case shall any mistake made by the City in stating the amount of a Business Tax prevent or prejudice the collection by the City of what shall be due from any Person carrying on a trade, calling, profession, or occupation subject to Business Tax under this chapter.

6.04.140 Business taxes payable at City offices.

All Business Taxes shall be paid in advance in lawful money of the United States to the City of Tracy, in a manner prescribed by the Collector.

6.04.150 Separate business tax certificate required—Warehouses excepted.

A separate Tax Certificate shall be obtained for each branch establishment or location. Warehouses and distributing establishments used in connection with and incidental to a Business Taxed under the provisions of this chapter shall not be deemed to be separate places of Business or branch establishments.

6.04.160 Business tax certificate period.

No Tax Certificate shall be issued for a period of more than twelve (12) months of the City's fiscal year beginning July 1 and ending June 30. Any application for a Tax Certificate received by the City mid-fiscal year will use a prospective estimate of how much the applicant would pay had they applied at the beginning of the Tax Certificate period.

6.04.170 Business taxes—Payment, delinquencies, and penalties.

- (a) All Business Taxes shall be due on the first day of July and delinquent at 5:00 p.m. on the last day of July.
- (b) For failure to pay a Business Tax when due, the Collector shall add a penalty of ten (10%) percent of such Business Tax on the first day of delinquency and shall add a further penalty of ten (10%) percent of such Business Tax on the first day of every subsequent calendar month following such first day of delinquency provided the amount of such penalties to be added shall in no event exceed fifty (50%) percent of the Business Tax due. The penalties provided in this subsection shall be assessed from the date when such deficiency was required to be paid pursuant to the provisions of this chapter.

6.04.180 Application - Initial.

- (a) Upon a Person making an application for the first Business Tax Certificate for a newly established or acquired Business, such Person shall furnish to the Collector a statement, upon a form provided by the Collector; setting forth the following information:
 - (1) The exact nature or kind of Business;
 - (2) The place where such Business is to be carried on, and if the same is not to be carried on at any permanent place of Business, the places of residence of the owners of same;
 - (3) In all cases where the amount of tax to be paid is measured by gross receipts, the application shall set forth such information as may be therein required and as may be necessary to determine the amount of the tax to be paid by the applicant;
 - (4) Any further information which the Collector may require.
 - (b) If the amount of the tax to be paid by the applicant is measured by gross receipts, he or she shall estimate the gross receipts for the period covered. Such estimate, if accepted by
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the Collector as reasonable, shall be used in determining the amount of tax to be paid by the applicant; provided, however, the amount of the tax so determined shall be tentative only, and such person shall, within 60 days after the expiration of the period covered, furnish the Collector with a statement, upon a form prescribed by the Collector, showing the applicant's actual gross receipts during the period covered, and the tax for such period shall be finally ascertained and paid in the manner provided by this chapter for the ascertaining and paying of such taxes, after deducting from the payment found to be due the amounts initially paid.

- (c) In all cases, the applicant shall, upon filing his or her application, pay no less than the prescribed minimum tax in advance, without being prorated, to cover the remaining portion of the current reporting period.
- (d) The Collector shall not issue to any such person another Business Tax Certificate for the same or any other Business until such Person shall have furnished to him or her a statement and paid the tax as herein required.

6.04.190 Application - Renewal.

In all cases, the applicant for the renewal of a Business Tax Certificate shall submit to the Collector for his or her guidance in ascertaining the amount of the tax to be paid by the applicant, a statement, upon a form prescribed by the Collector, setting forth such information concerning the applicant's Business during the preceding year as may be required by the Collector to enable him or her to ascertain the amount of the tax to be paid by said applicant pursuant to the provisions of this chapter.

6.04.200 Extensions of filing dates—Interest charges.

The Collector shall have the power, for good cause, to extend the time for filing any required sworn statement for a period not exceeding sixty (60) days and in such case to waive any penalty that would have otherwise accrued, except that twelve (12%) percent simple interest shall be added to any tax determined to be payable.

6.04.210 Refunds.

No refund of an overpayment of a Business Tax imposed by this chapter shall be allowed in whole or in part unless a claim for a refund is filed with the Collector within a period of one (1) years after the last day of the calendar month following the period for which the overpayment was made, and all such claims for refunds shall be filed with the Collector on forms the Collector furnishes in the manner prescribed by the Collector. Upon the filing of such a claim and when the Collector determines, in a reasonable time, that an overpayment has been made, the Collector may refund the amount overpaid.

6.04.220 Determinations of business classifications an administrative function.

The final determination of which Business or class of Business a Tax Certificate Holder or applicant for a Tax Certificate is engaged in, or about to engage in, shall be an administrative function of the City.

6.04.230 Applications for changes of business classifications.

- (a) In any case, where a Tax Certificate Holder or an applicant for a Tax Certificate believes that his or her Business is not assigned to the proper classification under this chapter because of circumstances peculiar to it, as distinguished from other Businesses of the same kind, he or she may apply to the Collector for reclassification. Such application shall contain such information as the Collector may deem necessary and require in order to determine whether the applicant's individual Business is properly classified. The Collector shall then conduct an investigation following which he or she shall assign the applicant's individual Business to the classification shown to be proper on the basis of such investigation. The proper classification is that classification which, in the opinion of the Collector, most nearly fits the applicant's Business. The reclassification shall not be retroactive but shall apply at the time of the next regularly ensuing calculation of the applicant's tax. No Business shall be classified more than once a year.
- (b) The Collector shall notify the applicant of the action taken on the application for reclassification. Such notice shall be given by serving it personally or by depositing it in the United States Post Office postage prepaid, addressed to the applicant at his or her last known address. Such applicant may, within 10 working days after the mailing or serving of such notices, make a written request to the Collector for a appeal hearing on the application's reclassification. If such a request is made within the time prescribed, the Collector shall cause the matter to be set for hearing before the City Council within 15 days. The Collector shall give the applicant at least 10 days' notice of the time and place of the hearing in the manner prescribed under section 1.12.020 for serving notice of the action taken on the application for reclassification. The City Council shall consider all evidence adduced and shall adopt a resolution reflecting its decision. The decision of the City Council shall be final.

6.04.240 Appeals on decisions of business classifications.

Any applicant or Tax Certificate Holder aggrieved by the Business classification decision of the City shall have the right of appeal to an impartial Hearing Officer as outlined by section 1.12.030 of the Code. Such appeal shall be taken by filing with the City Clerk, within fifteen (15) days after the notice of the decision of the City, a written statement setting forth the grounds for the appeal. The City Clerk shall set a time and place for a hearing on such appeal within thirty (30) days after the receipt of the appeal. Notwithstanding chapter 1.12 of the Code, the decisions and orders of the Hearing Officer shall be final and conclusive.

6.04.250 Rules and regulations.

The City Manager may promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary or desirable to aid in the enforcement of the provisions of this chapter.

6.04.260 Referrals to other agencies—Prepayment of taxes.

- (a) Referrals to other agencies. The Collector may refer to any governmental agency any statement and all other information submitted by persons subject to the provisions of this chapter in connection with the conduct of a Business regulated or supervised or otherwise the concern of any such agency, including agencies concerned with health regulations, zoning conformance, fire safety, police considerations, or any other safeguard of the public interest. (b) Prepayment of taxes. The Collector may advise any person filing a statement in connection with the payment of a Business Tax for a new or other Business not actually in operation that such person may desire to defer the payment of the Business Tax until the person has obtained whatever approval may be required in order to transact and carry on the Business until such Business is actually in operation. If any person does, however, pay the Business Tax in advance of the commencement of the operation of the Business, but does not operate the Business because City or other governmental agency did not grant an approval which is required by regulation or law in order for such Business to be transacted and carried on, then the Business Tax shall be refunded in full, after the person has informed Collector in a timely manner, to the person having paid such tax minus the application fee as set by resolution of the City Council and revised from time to time.

6.04.270 Enforcement.

- (a) It shall be the duty of the Collector to enforce each and all of the provisions of this chapter, and the various City departments shall render such assistance in the enforcement as may from time to time be required by the Collector, City Manager, or City Council.
- (b) The Collector, in the exercise of the duties imposed upon the Collector shall examine, or cause to be examined, all places of Business in the City to ascertain whether the provisions of this chapter have been complied with.
- (c) The Collector, and each designee, and any police officer or duly authorized inspector, shall have the power and authority to enter free of charge at any reasonable time any place of Business or to question any person, which Business or person is, or there is reasonable cause to believe such Business or person may be, subject to the provision of this chapter, and demand an exhibition of proof of Business Tax payment.
- (d) The Collector's designees who have satisfactorily completed a certified course in "Powers of Arrest" may thereafter exercise the powers of arrest as specified in Section 836.5 of the California Penal Code on any person who has committed a misdemeanor or infraction in their presence which is a violation of the provisions of this chapter.

6.04.280 Remedies cumulative.

All remedies prescribed in this chapter shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

6.04.290 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have adopted this chapter, and each section, subsection, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions be declared invalid or unconstitutional.

6.04.300 Violations—Penalties.

Any person violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring, or attempting to procure, the Business Tax certificate provided for in this chapter shall be deemed guilty of an infraction.

Article 2. Taxes

6.04.310 Determination of tax due based on gross receipts plus annual registration tax.

- (a) Every person who engages in Business within the City shall pay a Business Tax based upon Gross Receipts at the specified category rates listed in this section.
- (b) A flat rate of \$50 will be applied to the Base Gross Receipts, as defined by section 6.04.010, regardless of which category the Business falls under. If the Business makes less than the Base Gross Receipts but more than \$1, the Business will only pay \$50 in Business Tax. Any dollar amount in excess of the Base Gross Receipt, will be calculated by the rates below.
For example, if a Business has a Gross Receipt of \$700,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$200 ($[\$700,000 - \$500,000] \times .001$) for a total of \$250 in Business Tax.
- (c) If a Business has no Gross Receipts, as defined in section 6.04.010, then the Business shall be deemed to produce Gross Receipts in an amount at least equal to the cost of maintaining such operations for such Business. The cost of operations shall include, but not be limited to, rent and/or depreciation, salaries and wages, fixed charges, and other expenses.
- (d) Categories of Businesses:
 - (1) CATEGORY 1: General retail, restaurants, hotels, and tour operators and any

Business not otherwise classified (0.001 X Gross Receipts in excess of the Base Gross Receipts)

For example, if a Business has a Gross Receipt of \$700,000 and is a Category 1 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$200 ($[\$700,000 - \$500,000] \times .001$) for a total of \$250 in Business Tax.

(A) Any establishment or Business that conducts retail (the sale of goods to ultimate consumers, usually in small quantities), or wholesale (the sale of goods in quantity, as to retailers or jobbers, for resale), or restaurant (an establishment where meals, prepared food, and/or beverages are served to customers).

(B) "Tour operator" means a Business that provides tours in the City for Compensation.

(2) CATEGORY 2: Wholesale and Manufacturing (0.0015 X Gross Receipt in excess of the Base Gross Receipts):

For example, if a Business has a Gross Receipt of \$700,000 and is a Category 2 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$300 ($[\$700,000 - \$500,000] \times .0015$) for a total of \$350 in Business Tax.

(A) "Manufacturing" includes every person conducting or carrying on a Business consisting of manufacturing, packing, or processing any goods, wares, merchandise, or commodities at a fixed place of Business within the City or conducting or carrying on a Business of cold storage or refrigeration.

(3) CATEGORY 3: Contractors and Services (0.002 X Gross Receipt in excess of the Base Gross Receipt):

For example, if a Business has a Gross Receipt of \$700,000 and is a Category 3 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$400 ($[\$700,000 - \$500,000] \times .002$) for a total of \$450 in Business Tax.

(A) Contractors: every person, firm, or corporation conducting, managing, or carrying on the Business of contractor, subcontractor, or builder; or engaging in the construction or repair of any buildings; or engaged in any engineering, construction, operating, or advertising as such, or representing himself as such, and regularly employing help for building construction, sewer construction, plumbing construction or general construction.

(B) "Services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part,

chapter, or section of this chapter, and shall include those professions that may require governmental certification or licensure, but not be limited to the services rendered by a person engaged in the practice or profession such as hairstylist, beautician or cosmetologist, aesthetician, or art instructor.

(4) CATEGORY 4: Professionals and Rental Units (Commercial and Residential) (0.003 X Gross Receipts in excess of the Base Gross Receipt):

For example, if a Business has a Gross Receipt of \$700,000 and is a Category 4 Business, the total amount of tax the Business would pay would be a \$50 (for the first \$500,000 [Base Gross Receipt]) + \$600 ($[\$700,000 - \$500,000] \times .003$) for a total of \$650 in Business Tax.

- (A) "Professional services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the Business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter or section of this chapter, and shall include those professions generally requiring governmental certification or a professional degree, but not be limited to the services rendered by a person engaged in the practice or profession of law, medicine, surgery, dentistry, ophthalmologist, optometry, chiropractic, osteopathy, chiropody, dental technician, laboratory technician, physical therapist, mortician, undertaker, psychologist, psychotherapy, radiologist, speech therapist, veterinary, licensed financial planner, licensed investment counselor, real estate agent, real estate broker, stock/bond or security agent or broker, civil, mechanical, electrical, industrial, or other class of engineer, surveyor, geologist, appraiser, architect, accountant, real estate management, property management, income tax preparers, bookkeepers, income tax consultants, developer, or marriage counselors.
- (B) Any Business, individual, or entity that leases, rents, or otherwise provides property to another individual or entity for compensation.